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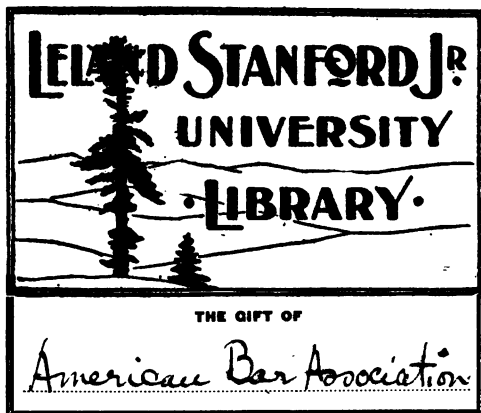
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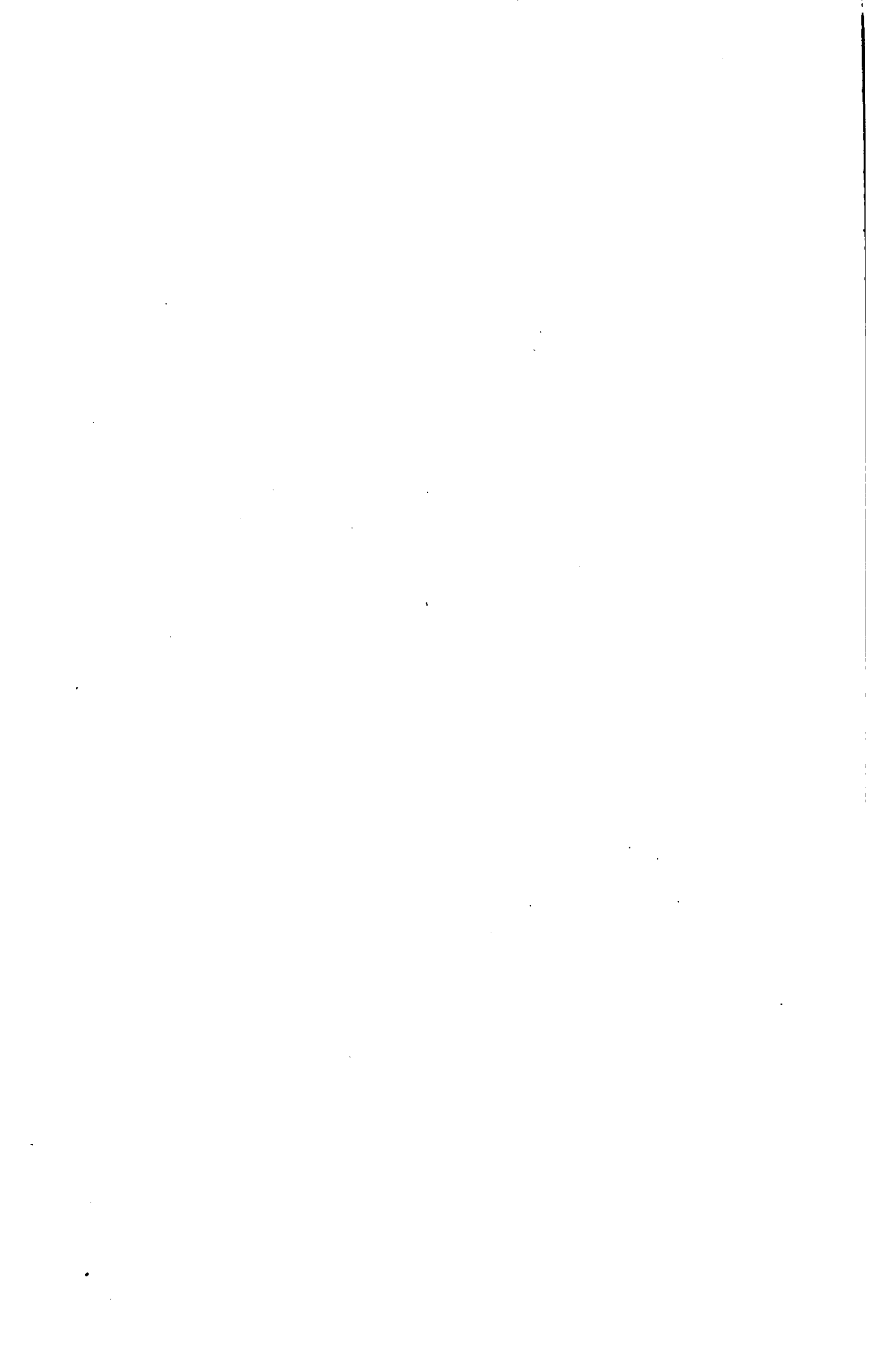
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REPORT  
OF THE  
TWENTY-NINTH ANNUAL MEETING  
OF THE  
American Bar Association

HELD AT  
ST. PAUL, MINNESOTA,

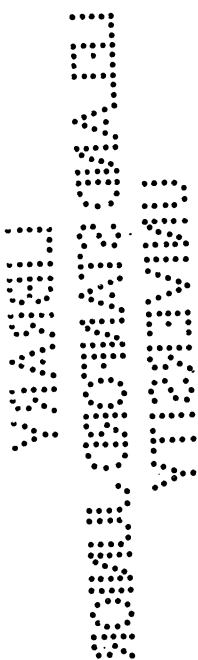
*August 29, 30 and 31, 1906.*

PART 2.  
CONTAINING PROCEEDINGS  
OF THE  
SECTION OF LEGAL EDUCATION,  
SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW,  
ASSOCIATION OF AMERICAN LAW SCHOOLS,  
CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

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PROCEEDINGS  
OF THE  
SECTION OF LEGAL EDUCATION.

FIRST SESSION.

*Wednesday, August 29, 1906, 3 P. M.*

The Section was called to order in the Capitol building, St. Paul, Minnesota, on August 29, 1906, at 3 P. M., by the Chairman, William Draper Lewis, of Pennsylvania.

The Chairman :

The hour of meeting having arrived, I call the Section to order. I understand that we have no minutes, and I will therefore ask the Secretary to make a report from the officers of the Section.

The Secretary :

Mr. Chairman and gentlemen of the Section: The principal matter upon which the officers of the Section can report this year is with reference to the collection of statistics from the law schools. Two years ago a resolution was passed in the Section directing the officers to gather statistics from all law schools of the country, not merely the schools in the Association of American Law Schools, but from all law schools, on certain points which were designated. A blank form was drawn up covering the ground in a measure, and this form was sent around to those interested in legal education for suggestions. Those suggestions have now been embodied in a blank form which I have had prepared and copies have been distributed throughout this room. The purpose is to gather, as far as we can, statistics on the points indicated in the form. We shall be glad to receive further suggestions from the law school men present this afternoon and from others. It is the wish

of the officers of the Section to have the statistics cover all material points.

In connection with the suggestions which came, there was one, and only one, which I have disregarded, namely, that to publish the statistics from the larger schools might result in some of the smaller schools thinking that unfair advantage was taken of them by the Section of Legal Education. I confess that I have not had any great sympathy with this suggestion. The idea of gathering these statistics did not come from the stronger schools, but from one of the weaker schools. The purpose of it was not to oppress the weaker schools, but rather to inspire them to renewed efforts. The result, I think, will be this: that the boards of trustees of the various schools that are not able, as yet, to make as good a showing as other schools in these returns will be much more apt to give to their schools the support which they need. I have already seen one illustration of this. A board of trustees in a state university had been allowing its law school \$800 a year for its library; when the attention of the board was drawn last spring to the fact that other law schools were getting much larger sums for their libraries, the amount was increased to \$1700. I believe that a showing of what the best schools are doing will have a very beneficial result upon all of the schools in the country.

The Chairman :

I do not suppose that any action is necessary on this report. As I understand it, the officers, at a previous meeting, were directed to gather these statistics, and that resolution would hold over until next year. Part of the work has been done. The principal part of the work, the actual gathering of the statistics from all the schools, yet remains to be done.

I understand that it is desirable that the election of officers for the next year take place at this meeting, rather than at the meeting on Friday; and therefore I suggest that a motion be made now to appoint a committee to nominate officers for the ensuing year.



C. C. Cole, of Iowa :

I make that motion.

The motion was seconded and adopted.

The Chairman :

The Chair will appoint as the committee to nominate officers C. C. Cole, of Iowa ; John H. Wigmore, of Illinois, and Henry M. Bates, of Michigan.

The Chairman then delivered the annual address as Chairman of the Section.

*(The Address follows these Minutes.)*

The Chairman :

We have with us this evening Mr. James E. Young, the Director of the Wharton School of Finance and Commerce of the University of Pennsylvania. Mr. Young was to have read his paper on Friday evening, but as Mr. Wall, the President of the Illinois State Bar Association, who was to speak today, is not here, I have asked Mr. Young to present his paper now.

Mr. Young then read his paper.

The Chairman :

Gentlemen : Both of these papers are now open for discussion. I especially wish to emphasize the fact that the paper of the Chairman is open for discussion, because I understand that there has been a feeling among the members of the Section that the address of the Chairman should not be discussed.

William S. Pattee, of Minnesota :

Will the Chair allow me to make a statement before the discussion begins? Mr. Brown, the President of the Minnesota Bar Association, has been very anxious that everything should be done to facilitate your work and contribute to your entertainment, and consequently he has appointed a committee to assist the officers and members of this Section in any way that may be desirable. That committee consists of Mr. Halbert, of the St. Paul College of Law, Professor Page and myself, of the University of Minnesota College of Law ; and we are ready at any time to render any assistance which you may wish.

The Chairman :

I feel quite certain that I express the feeling of all the members of the Section when I say to the Dean of the College of Law of the University of Minnesota that we appreciate the courtesy of the action which has been taken.

Edwin A. Jaggard, of Minnesota :

Several things in the admirable paper just read serve to emphasize the brave spirit of this morning's address by the President of the American Bar Association. One line of distinction more or less clearly drawn between the English and American Bars is this: the English Bar tends to search for truth in law books; the American Bar to look through law books, to nature or expediency for truth. English, and perhaps especially Canadian, lawyers have a controlling regard for precedents as the embodiment of law. American lawyers, confronted by vastly more numerous and often inconsistent opinions of different jurisdictions, are driven to their criticism, to adopting the best rule attainable and to justifying decisions by principle. The mind of the American jurist is an open door. The advantage is plainly with us.

American law schools are therefore sound in theory in teaching that the law is not merely what judges, with their localized knowledge and restricted intelligences, have held to be law, but that the law is a progressive science. This tendency of our jurisprudence, the multiplex variety and increasing numbers of our authorities alike impose greater labor on the Bench and Bar and require of both better equipment and more discriminating minds. More knowledge and longer training must obviously be demanded of all law students. A vivid appreciation of this necessity, as often impaired by our familiarity with it as a truism as it is emphasized in courts by pitiable exhibitions of the want of preliminary education on the part of counsel, should lead to an aggressive effort for the maintenance of higher standards for admission to the Bar. Harvard is right in exacting a collegiate degree as a prerequisite to registration in its law school. Because of inev-

itable competition between law schools, isolated efforts to approach that standard are likely to prove futile. Sustained and systematic co-operation along this line by those here present could finally accomplish what we are all aiming at, but I fear disconnectedly striving for. The responsibility weighs the heavier because in large measure the honor of the Bar and the excellence of the law will be determined by the men who teach in these schools not only what the law is, but also what it ought to be.

James D. Andrews, of New York:

I had hoped that the address of the Chair would provoke greater discussion. From my standpoint, examining the matter as I have had occasion to do, I think that the remarks of the Chair strike deep into the vitals of our institutions, perhaps more so than any other thing that I have heard expressed in these meetings. It is a homely expression, but a true one, that "the hand that rocks the cradle is the hand that rules the world." The cradle of American jurisprudence, the cradle of American law, is being rocked today by professors of law in the schools of America. And while they cannot, of course, neglect that daily training which the Chairman has said is necessary and essential, and is properly occupying the greatest amount of time in the law schools, I do believe, with other jurists besides our Chairman, that it is to be regretted that more time is not expended in the teaching of those things which pass under the name of legal ethics.

The last speaker referred to the transformations which take place in the character of business by the changed circumstances of business life. The truth must be apparent to any close observer that there is a change relatively in the relations of the Bar to the public, which has arisen because of the magnitude of great business enterprises. There was a time in this country when our institutions were entirely dominated by lawyers. The time was when the relation of client and lawyer actually existed. It may be said that the whole relation is now changed, and that instead of client and lawyer the relation

of employer and employee has been substituted; and that a great many of our lawyers, those who are now exercising great weight and influence in the country, are employees. You can scarcely think of anything in this country that is not being looked after by lawyers as employees of great corporations. That, of course, brings up the definite idea which is the foundation of the address of the Chairman, and it rests with the teachers of the law schools—because they are the only ones who have communion personally with the minds and characters of the students—as to whether that condition shall be continued. Those who are instructors can best say: You must determine, when it shall be your good fortune to complete your course and be admitted to the Bar, whether you will become an employee or a practitioner of law, and taking the position that this must be a government of law, no matter who the client is, you will not do those things which are undermining our institutions.

Nathan William MacChesney, of Illinois:

The last speaker has suggested, what to my mind is a fact, that possibly the corporation lawyer may be referred to as an employee; but after listening to the splendid address of the President of the American Bar Association this morning, it seems to me that we may well take heart when a corporation lawyer of his distinguished standing takes the attitude which he took in reference to regulative measures by the national Congress. We may still feel that a lawyer, though he represents great business interests, is in a position to, and does, still regard the public interests as paramount.

It seems to me that the Chairman in his address referred to two quite distinct things when speaking of the attitude of the lawyer toward his public duty, and his attitude toward a higher professional standard; the desirable thing is, of course, that the right attitude toward both should be cultivated as much as possible. Now, my close observation of these matters has been confined particularly to two or three law schools, and it seems to me that Harvard has done a very great deal towards

stimulating a higher professional standard and a higher intellectual attainment in the profession. Northwestern University, in the West, has been a close ally of Harvard in that regard, in its attempt through its courses in legal history, etc., to stimulate interest in the higher side of the profession; while at the University of Michigan, it seems to me, that particular emphasis has all along been given to the public side of a lawyer's life and that the students come out from there with perhaps more of an interest in public affairs than from most of the law schools of the country; and that the faculty there has inspired the students with a high ideal in that respect. It seems to me very desirable that the spirit of the first two and the last should be combined. I doubt not that may be done, perhaps, in some law schools, but I do not know where. Certainly it is the desirable thing to do.

In talking with a distinguished law school teacher a year or two ago, I expressed my surprise at the fact that he was apparently encouraging the starting of a night school by lending his name to it. I was interested in his reply when he stated that those in charge were determined to start one, anyway, and he was anxious that it should be started on the right basis.

We must recognize that the night school is a factor in legal education, whether we desire it or not, that has its legitimate place under conditions as they actually exist, and that it would be unfortunate to have an impression go out that this body is opposed to night schools as such. Some effort should be made by this Section, or by the Association of American Law Schools, to have the courses in those schools, as well as the courses in the regular university law schools, proceed along lines which will lead to a higher professional attainment; courses in legal ethics, in legal history and biography, and the science of jurisprudence, and courses upon the public functions of the lawyer should be introduced and encouraged and an atmosphere of high professional ideals should be everywhere maintained.

Mark Norris, of Michigan :

My observation at the Bar and as a member of the State Board of Law Examiners in my own state has led me to agree with the Chairman as to the necessity of the schools giving greater weight to the ethical side of professional training. It does not seem to me that the blame for this defect lies at the door of anyone, except the profession at large, for students of the history of our profession know that no profession is better provided with good statements of the standards of legal ethics, and for that matter, with formulated codes of legal ethics, than ours. They should be taught, and properly taught, in the schools. The ethical side of our professional training has never been better presented than by the distinguished Justice of your own Supreme Court, Mr. Justice Sharswood, whose "Legal Ethics" was for a long time the standard in many of the schools which taught legal ethics. My observation during my service as a member of the State Board of Law Examiners of Michigan, and in making an examination of the curricula of a large number of law schools, is that this subject is not taught in the schools. If it were, I am satisfied that it would result in great benefit to the profession at large.

James H. Brewster, of Michigan :

It might be inferred from what the last speaker stated that in Michigan the leading law schools did not have a course in legal ethics. We have such a course.

Mark Norris :

Being a graduate of the University Law School of Michigan myself, I am satisfied that I passed through an entire course of study there without once hearing the study of legal ethics discussed. However, that was more than twenty-five years ago.

C. C. Cole, of Iowa :

I want to express my appreciation of the address of the Chairman and my hearty concurrence in his suggestions. There is no difficulty in getting law students to come before the public in matters interesting the public, but it is very difficult to get lawyers to take part in any leading way in the

benevolent or charitable side of the law. In my state, which is fairly abreast of other states in the side lines of the profession, we had no juvenile court law until, about three years ago, an organization of ladies determined that there ought to be such a law in the state. They approached one and another of our lawyers to draft such a law for them, and finally the work of doing it devolved upon myself. Now, there is a reluctance on the part of the courts and the machinery to enforce the law. I think the conservatism of our profession is unfortunately manifested in such things. I accept it not only as a suggestion, but as a direction to me in future to see that the line of public duty commended by the Chairman's address is brought to the attention of every graduate of my school.

Edmund F. Trabue, of Kentucky :

I am not a member of the faculty of any law school and I have never taught law, but it seems to me that the question propounded by the Chairman is a most practical one. That is, How are we to maintain the integrity of the profession, which was once its glory and which it is said is now on the wane? I have no doubt it is true that it has suffered in a very great degree, and I am convinced that the higher education of the lawyer is probably the surest, if not the only practical, remedy for the ill. The man who undertakes to practice law, and who is not qualified to compete with others who are better prepared, must invariably fall into evil practices, and the experience of practical lawyers shows that he does. That man will impress his methods upon the profession as well as be impressed by the methods of his brethren. If those men are sufficiently numerous, they will impress the profession in proportion even more than they will be impressed by the other members of the profession. Therefore, the greater number you have of well prepared lawyers, the higher standard of integrity and of professional ethics you will have.

There is another idea that suggests itself in this connection : What are you to do to remedy the evil that you find in those members of the profession who are dragging it down? How

are you to reach them? The physician appeals to the nature of the human being that he treats; he receives a response if his treatment is sound. But the lawyer cannot do so to the same extent; he must appeal to the courts and the courts make the response; therefore, the remedy must be one that reaches the courts as well. Now, if the lawyers without professional ethics are sufficiently numerous, they will impress the courts; their methods will impress the courts and the methods of other lawyers, and the tone of the courts will respond accordingly.

You have said, Mr. Chairman, that in England the case is different from what it is here, and that the case is different now from what it once was. Now, is it not the difference in the courts that give the response when called upon to apply the remedy? I believe that while the same lawyers, educated in the same schools, get on the different Benches, still there is a difference in those judges after they are on the Bench, because one of them has complete independence, while another has not, and assuming the intention and desire to do the best in every case, the one who has complete independence will apply the remedy, while the one who has not such independence cannot do so. This is not at all reflecting on the individual when he gets on the Bench.

I believe that we must, in providing a remedy or in undertaking to find one, apply it partly to the Bench. We must increase the independence of the judges. We must enable the judges to respond in impunity when they feel that they are called upon to remedy an evil or to discipline an offender. So I believe that the remedy is two-fold: first, in a higher education; secondly, in increasing the independence of the judges. As a practical matter I think the principal remedy lies in the first expedient.

Clarence H. Miller, of Texas:

I agree in general with the remarks of the Chairman, but it seems to me that the evil he mentions is a little more deep-seated than has been recognized. I doubt whether a course



of lectures on moral conduct will revolutionize the morality of the Bar. He has made some comparison between the English and the American courts and practitioners. If the lawyers of Toronto, for instance, as was intimated, have a higher moral standard than the lawyers of Buffalo, it is not, I think, because they got as law students more moral lectures. The difference between the English and the American lawyer in his attitude to public duties is not due to difference in professional training, but rather to national characteristics. The ideals of England and America are not the same. There you will find among the people generally, as well as among the lawyers, a greater reverence for public rights, a higher appreciation of public duties than here. The English have, according to my observation, more public spirit than we, and in my opinion, this difference is not satisfactorily accounted for by differences in schooling or education. The evil the Chairman complains of is not so much a professional as an American fault. It has its source in our inordinate love for the almighty dollar. The glittering prizes handed out by great corporations and combinations of capital to the lawyers who can successfully represent them before the law are so tempting in this country, where wealth is unduly valued, that something more than moral lectures in our law schools will have to be accomplished in order to persuade men to refrain from accepting such prizes upon the terms on which they are offered.

To strike at the root of the evil efforts must be made outside the Bar to build up higher ideals among the American people. One profession, secluded to itself, cannot reasonably expect to reach and maintain higher moral standards than those which are generally recognized by the people among whom that profession exists.

In saying what I have I do not mean that there should not be a course in law schools on legal ethics, because I believe it will assist, but what I do insist upon is that it will not reach the real source of the evil.

Reference has been made to the administration of justice in England and America and the points of superiority of the

English system have been accentuated. There are, however, defects in that system which do not exist in ours, and which ought to be noticed in fairness to ourselves. If justice is administered more quickly in England than here, it is in some instances administered there very expensively. I personally know of a case where an American brought an ordinary civil slander suit in London. There were no depositions taken and not over a half a dozen witnesses summoned, all of whom lived in the city. The case was not tried, but when called for trial an agreed judgment was entered. In that simple case the costs, which in Texas, under the circumstances stated, would not have exceeded seventy-five dollars, were over thirteen hundred dollars. It would seem that we have some good points as well as some bad ones.

William S. Curtis, of Missouri:

I hoped that some one would suggest, since we are talking about elevating the ethical standards of the profession, what I consider the chief difficulty. That is this: the reluctance of our judges to act upon reports of grievance committees of the Bar associations in cases of disbarment, and I hope there are judges here who will listen to this suggestion. Not only do many of our judges hesitate about disciplining the profession in cases requiring it, but when a Bar association does succeed in having a member disciplined, in a year or two afterwards a motion is made for his reinstatement and it is generally granted. That, I think, is the great obstacle to elevating the general moral tone of the profession.

The Chairman:

I should like to correct a slight misconception on the part of the gentleman from Texas in regard to my feeling on a course of ethics. I sympathize with him in his point of view. I said that I did not think you could teach ethics or materially elevate the standard of the Bar by a course of legal ethics; but I did not say that a course in legal ethics is out of place. There are certain definite rules in regard to right conduct as a lawyer which go beyond the rules of ordinary morality, but

I do not think you can elevate the moral tone very decidedly by merely mentioning such rules. The point that does impress me is that if it is the duty of the profession to do some definite thing, as, for instance, to administer justice with certainty and rapidity, and some other common law country has adopted an improvement, you should not allow your student to escape from the law school without seeing that he knows what that improvement is. The very fact that he had the knowledge would give him the interest and would give him the feeling that he belonged to a profession that had a public duty to perform.

Also with regard to the expense of administering justice in England. I am glad the gentleman called attention to that. Although there is a great deal to be said for the English point of view, I think the high costs of an English case a defect. At the same time, when I go to file a writ, whether I am charged five pounds or a shilling has nothing to do with the question whether my case is going to be decided quickly or not. Now, quick dispatch of business is the point in which they excel. Our administration of justice would be as quick and as certain as theirs if we adopted certain fundamental reforms, not one, but a combination of them; and our delays in the administration of justice do run up the costs of litigation. With us the costs are in large part costs which are not "court costs." The successful party cannot saddle such outside costs on the other side.

In this connection, let me give an illustration of a case in Philadelphia where a man sued to collect a bill amounting to about five hundred dollars. There were three witnesses. The plaintiff's case went over from time to time because it was not reached on the calendar. Then when it was called up it was appealed and a new trial was granted. Again it was tried, and when the plaintiff finally succeeded in obtaining a judgment, counting his own time and expense in travel, seeing his witnesses and paying his lawyer he found his successful litigation had cost him exactly five hundred dollars more than he

had collected. Now, that is rather an extreme illustration, but it is an example of how delay means expense.

Is there any further discussion? If not, I will call upon the Nominating Committee for a report.

C. C. Cole, of Iowa:

Mr. Chairman and gentlemen: The Committee on Nominations begs leave to report recommending the election of Roscoe Pound, of Lincoln, Nebraska, for Chairman of the Section, and Charles M. Hepburn, of Bloomington, Indiana, for Secretary.

On motion, duly seconded and adopted, the Chairman of the meeting cast the ballot of the Section for the election of the gentlemen named and they were declared duly elected.

The Chairman:

I would announce that there is an error in the printed programme, due to a mistake. On Friday afternoon at 3 o'clock we are to have an address from Mr. E. A. Gilmore and also an address from Mr. George W. Wall, besides which there will be an address by Mr. Mark Norris, of Michigan. Mr. Norris's name was inadvertently omitted from the programme.

On motion, the Section adjourned until Friday, August 31, 1906, at 3 P. M.

## SECOND SESSION.

*Friday, August 31, 1906, 3 P. M.*

The Chairman:

The Section will come to order. We have three papers to be presented this afternoon. The first is by Professor Eugene A. Gilmore, of the College Law of the University of Wisconsin, on "The Relation of the University to Professional Instruction in Law."

*(The Paper follows these Minutes.)*

The Chairman :

The next paper is by Mr. Mark Norris, of Michigan, on "Some Notions about Legal Education."

Seth Shepard, of the District of Columbia :

Before that paper is read I should like to make an inquiry, namely, if there is any business left unfinished or any new business that it is proposed to dispose of at this meeting?

The Chairman :

I am not aware of any new business and I do not know of any unfinished business. The usual order of procedure is to have papers read and then have them discussed before taking up new business.

Seth Shepard :

I have not been attending the sessions so as to keep informed, and I made the inquiry because this evening we are all going out, I suppose, and there will be very little time for the discussion of papers and the transaction of business.

The Chairman ;

Of course, if the Session desires to do so, we can discuss this paper first, but unless there is some motion made to that effect we will proceed with the reading of the next paper.

Mark Norris, of Michigan, then read his paper.

*(The Paper follows these Minutes.)*

The Chairman :

George W. Wall, President of the Illinois State Bar Examiners, is not present. We have his paper, but as we have already heard two papers, unless there is some objection, I shall call for discussion of the papers that we have heard before asking for Mr. Wall's paper to be read.

Henry Wade Rogers, of Connecticut :

I simply want to say what is known to a great many, though perhaps not to all in this Section, that the American Bar Association and the Association of American Law Schools and this Section are all on record now and have been on record several times against admission to the Bar on diploma.

The Chairman ;

Gentlemen, these papers are now before you for discussion.

John H. Wigmore, of Illinois :

Being connected with at least two reputable institutions whose diplomas admit to the Bar without other examination, I am going to make this suggestion, which I have already heard made. I suggest that the members of the faculties of the state universities of this and other states form a little separate organization of their own after this meeting and organize themselves into a joint committee for a campaign before the legislatures in their respective states, going in a body to their legislatures and begging to resign the privilege of admitting their students upon diploma, which they here vote against, but of which from year to year they enjoy the benefit.

Henry M. Bates, of Michigan :

In view of Dean Wigmore's kindly suggestion to the struggling institutions here represented, it may be proper for me to say that what he says entirely meets with the approbation of the law faculty of the University of Michigan. The matter was brought up before our faculty last year when a memorial of some sort was presented by some member of the Michigan Bar to the Supreme Court, asking the Court to take the matter of admission in that state into consideration, ignoring the fact that admission to the Bar in Michigan is regulated by statute and not by the Supreme Court. At that time a copy of the memorial was sent to our faculty by the Supreme Court, and, while it was not necessary for us to take any formal vote, it was very clear that there was a decided preponderance of opinion in favor of having this so-called privilege taken away from us. An answer was made to that memorial, because certain misstatements of facts were made by the gentleman who presented it, and we thought it necessary to deny them. I think, as a matter of fact, from a conversation that I had yesterday with Judge Moore, of our Supreme Court, in which I urged these same views upon him, that he felt that the court was without power in the premises, because of the statute

which exists in Michigan. But Dean Wigmore seems to indicate, in a spirit of jest, of course, that our action here is inconsistent with the continued existence of the statute of Michigan. We are rather powerless, however, when it comes to dealing with legislation. Speaking for myself, I am sure that I would be delighted to have that power of admitting upon diploma taken from us. And I may add that the fact that our students are admitted to the Bar of Michigan upon our diploma in no way or degree affects the scope, methods or manner of our instruction. There may have been a time when the privilege was of advantage to us, but it is not perceived that it affects us in any respect now. The great majority of our students are preparing for practice in other states, and this has been the case for many years.

Andrew A. Bruce, of North Dakota :

I have been through this battle myself. In my opinion the great trouble with the modern law school lies not with the students or with the law teachers, but with the trustees of the universities, with the university presidents and with the superintendents of public instruction in the several states. I am speaking especially of the state universities. It seems to me that a university president is rarely to be found who looks upon a legal education as an education at all. The average college president does not realize that it is an important and necessary branch of every great system of state education ; that law is after all merely applied political economy, applied sociology, applied social ethics. He looks upon the law school as a bread and butter proposition, a professional school merely, and as one in which there is but little merit. Practically the only question I am ever asked at home in regard to my own school is, "How many students have you?" There is never a question as to the kind of work done, the character of the students, or the part that the law school is taking or should take in the upbuilding of the state. The superintendent of public instruction of the State of North Dakota has never once entered the doors of our school ; only one of the

trustees of the university has ever entered them. When the educational associations of the state meet, when the National Educational Association of America meets, there is no contemplation of the law school problem and the law school is never mentioned. Instead of the law school being looked upon as an important part of a state educational system, as an agency which is valuable, if not absolutely necessary for the training of an intelligent citizenship in a country where the law governs and everyone is presumed to know the law, it is looked upon as a professional school merely, as a lawyer incubator.

If we renounce the privilege, if it be a privilege, of admission to the Bar upon the presentation of a law school diploma, I believe we shall make some headway in disabusing the public of the idea that the law school is merely a school for the training of practicing lawyers. When the public gives up this idea and comes to look upon the properly conducted law school as an important factor in the general scheme of education, we shall find, I believe, a hearty response to our demand for larger libraries and increased accommodations. We need first of all to educate our college presidents and trustees on the basic proposition that, in a great democracy where every man is presumed to know the law, the rules that control society and the principles on which they are founded are worthy of investigation and of study; that admission to the Bar as a practicing lawyer has nothing basically to do with graduation from, nor is the education of practicing lawyers the primary function of, the American law school.

Charles Thaddeus Terry, of New York :

I think the wisdom which selected two papers on this subject for this afternoon has been amply justified; two papers which view the law school from two entirely different, not to say inconsistent, points of view; the latter paper looking at the student with reference to his ability to pass the Bar examination and engage in the bread and butter process, and the former paper looking at him purely as a student. I think the discussion of the subject from those two points of view in the



two papers was such as to make us pause, and certainly such as to give us great food for reflection. In my own case, I cannot let it pass without saying a word.

I differ entirely from the last speaker when he says that a legal education is only part and parcel of general education. He changed his statement in the latter part of his remarks, and with the change I agree, when he said that legal education was as much a part of general educational institutions as any other. If we ever get to the point when we concede, as my friend who read the first paper said that some do concede, that a law school is, technically speaking, only a school of jurisprudence, we shall have destroyed, to a very large extent, the efficiency of what we now call law schools.

He suggested, I mean the reader of the first paper, that, to his mind, the division between that part of a student's career which is devoted to acquiring what might broadly be called culture, and that part which is devoted to gaining that which might be called education, is based on a misconception; that any division into strict periods of time, as between what we have designated culture on the one hand and education on the other, might very properly be said to be an erroneous division.

Now, it occurs to me that perhaps the error on that question lies in dividing the course or the career of the student into any time periods at all as regards education and culture getting. If a man gets education while he is getting knowledge or culture, whichever you choose to call it, he cannot get the knowledge or culture themselves in any degree worth while. From the moment that he begins to learn, he should, nay he must, begin to be educated; in other words, the moment he begins to get knowledge or culture, whichever you choose to call it, he should begin to be educated; and I mean here by "educated" learning to think, that is, learning to think consecutively and logically.

It is an expression which we frequently hear in the case of a surgeon performing an operation, that the operation was successful, but the patient died. That brings me to the second

point of the first paper which I wanted to refer to, which was the suggestion of the speaker that perhaps it was wrong, educationally speaking, for a law school to have upon its faculty or in its corps of instructors men who had been in practice or are in practice at the time when they are also instructing. I think the reverse is the fact, and I think so because legal instruction involves not only education, the implanting in a man's mind of the ability to think two thoughts consecutively, but also knowledge. There are two rails which must carry a car. That is where legal education, being an applied science, differs from a great many sciences. On the one hand, learning the alphabet is getting pure knowledge; it does not involve any logical faculty, any ability to reason, but it is vital. Then you have pure logic, which does not involve anything practical at all. If a man is going to deal with the affairs of life, whether as a lawyer or in almost any other capacity, he must have the reasoning faculty; therefore, he must have exercised his mind in dialectics, he must know logic.

Now, those two things are united, I think, in the clearest possible way in what we call legal instruction; and, unless a man gains both of those things, he does not become a good lawyer. A man who has been in active practice in the forum, whether he is there at the time he is instructing or has been there before, is, it seems to me, in the best possible position, assuming that he has the other requisites of a law teacher, to inspire students to learn the things which they want to know and to exercise the reasoning faculties which they wish to develop. And I say this in spite of the conspicuous examples of eminent law teachers who have never had any actual experience in practice. There are exceptions, you know, which prove the rule. I think the truth lies in the other direction, and certainly it is a matter of almost everybody's experience that the law student takes more notice, has more enjoyment in his course, if he can see through the illustrations, through the suggestions of the instructor, something of the actual forum in which he is going to apply his knowledge.

And now to go back. An instructor may be never so skillful in the analysis and synthesis of principle, may be never so learned in legal principle, never so versed in dialectics and conscientious in using all those things in his instruction, and yet fail to touch the particular man or the particular set of men whose minds he is trying to mold. I saw upon the outside of a magazine the other day this title of an article, "Does Education Hit the Mark?" I did not read the article and I do not care what was in it, but it suggested this idea. We are apt to think of shooting at a mark as it is done by our riflemen with guns resting upon something and the mark at a distance staked up in the ground; but that is not the kind of way that a law instructor shoots, and that is not the kind of mark that he has to hit. The kind of mark which the law instructor is aiming at is more like a flock of birds, some flying more swiftly than others, some dodging this painful operation of thinking, and some dropping from their own weight, which always prevents their being hit. That is the most difficult mark in the world to shoot at.

And the point that I am coming to is that, perhaps more with law instruction than with any other kind of instruction, the instructor must be a man who is able, because of his experience and his knowledge of human nature, because of his contact with other men, and thereby getting to know men and to know men's minds, to understand the mental capacities and the varying mental operations of the students with whom he has to deal. That is the whole point after all; because he cannot reach them, they being a flock of birds of different characteristics, of different methods and speeds in flying, unless he gets, pretty early in his course, to know them well, to know the particular turns of them, and then to think out and work out his course of instruction in such a way that sooner or later he can hit or touch them all.

Then, if you are talking about legal ethics, as was done in one of the papers, surely the man who has had some knowledge of actual practice is better able to tell a class how to apply,

what was called the other day in the address of the President, "private self-control," to the practice of law.

I think, Mr. Chairman, that there is danger in some of our universities that the law school may be made too integral a part of what is called general education; that there is danger in some of the schools that it may become too purely a school of jurisprudence, and that would be lamentable. We must never forget that law is an applied science and not a pure science.

William W. Keysor, of Missouri:

I for one rather deplore the depreciation of the law school diploma manifested by the remarks made here today. I represent a law school that for a long time enjoyed the privilege of having its graduates admitted to the Bar without further examination. It gave up that privilege because it was enjoyed by other schools whose graduates did not seem to have the necessary qualifications. Now all candidates for admission to the Bar are examined by a commission, and we have this result: Our two-year men attend these Bar examinations, and so far none of them has failed to be admitted. It is true that they have not studied some subjects very much, but they cram on some text book for a week or two, and they pass. I said to one young man, "You are coming back to the law school to finish your course, I suppose?" He replied: "Well, I don't know." I said: "You do not think this Bar examination means that you are qualified to practice law, do you?" "Well," he replied, "I should think so. This Bar examination has been established by the law of the state; these examiners have been appointed by the Supreme Court, the highest tribunal in the state; I have passed the examination, and by their certificate they assure me that I am qualified to practice, and I think that is as good an authority as any law school faculty can give." Now, that is the proposition. We are having it over and over again. The large majority of young men study law with the expectation of finally practicing, and the majority of those who practice do it as a means of livelihood; and when they are admitted to the Bar after a state Bar exam-

ination they feel that they are qualified at least to begin to do business. And they are fortified in that, if you please, by the remarks of some lawyer, such as the remark of a lawyer in St. Louis that I heard of the other day who said, "Why, there is nothing in all this technical training of the law school. When I want to know what a proposition is I look up the digest and tell a clerk to bring me the cases. I don't have to go all through this reading to know what the law is."

I do think that while it is just and right that all who are admitted to the Bar shall be subjected to the same, or at least to a sufficient test, yet I do think that we ought not to depreciate our own diplomas any more than we can possibly help. Mr. Gilmore has told us that legal education should be scientific; that it should be given in established colleges, and that the men who give the instruction should be teachers trained especially for that business. But he did not tell us where they should be trained. Now, suppose a young man goes to one of these colleges and puts in three years under these special teachers who do nothing else but teach law, and he gets his diploma, and you say to him that he may as well throw it away; that it is of no use for admission to the Bar, but that he must go and take an examination before a Bar commission, which will give him an examination prescribed, not for one of his ability, but for the average law student of the state. In other words, I believe the tendency is that a Bar commission will depreciate the character of the examinations in order to meet the demand of the Bar and of the young men throughout the state who want to be admitted, and who have not taken these three years under trained instructors. While I thoroughly agree—and the school that I represent worked with great assiduity to get the law passed by the legislature taking away from our school the right to have our graduates admitted on diploma—yet I cannot but feel that we ought not to be compelled to say to our students that our diplomas in themselves are not of much value to them.

W. E. Walz, of Maine :

In my state we have found a remedy for precisely this state of affairs. The members of the Bar and the legislature have agreed that no student shall ever be admitted to the Bar unless he has studied three years either in a law office or in a law school. Our diploma does not admit to the Bar. Our students must pass an examination just as all other men who come up for admission to the Bar. It is well that this should be so. But we have this trouble: From a fifth to a fourth of our students come to us from the State of Massachusetts. Now, as matters stand, they will come to our school and attend for two years, and then they will go back home to take the Bar examination in the old commonwealth. This year of the four students from our school who took and passed the examination in Massachusetts, three remained at our school for two years only, and I feel morally certain that not one of them will return to the school to finish his course.

Mark Norris, of Michigan :

In reference to the remarks made by the gentleman from St. Louis, and the remarks of the gentleman who followed him, I have a word to say in reference to our experience in Michigan. Our law requires three years of legal study. A rule of the commission defines a year as at least thirty-six weeks of full study. I mean by that full days' work as it would be practically in an office, continued for not less than thirty-six weeks in each year, before the candidate can come up for final examination. During my experience on the law commission we had, on a number of occasions, students who came to us from the university law school without having finished their course. None of them ever passed the examination given by the State Board of Examiners in Michigan during my term. It was not because they were students who had come without finishing their full university course, for they had read law in offices before and had finished three years' study. And it was not because we were prejudiced. We gave them exactly the same examination that we gave to the

other candidates, but found them weak, and they were turned back.

The objection which these gentlemen make applies, it seems to me, more to the character and quality of the examination by the State Board of Law Examiners or the standing committee than it does to any question of the diploma privilege in any law school. I think this difficulty can always be met by the commission's seeing to it that their examinations are of the right character.

The Chairman :

It may be of interest to Mr. Norris, in view of one of the statements in his paper, if I should state the result of the action taken in Pennsylvania. I think I am correct in saying that we are the only state where there is admission to the Bar based upon the suggestion which was contained in his paper, namely, that it was not a subject for legislative action. When the Pennsylvania Bar Association desired to take hold of the matter they rather felt the fact that there was in the air a certainty that any act of the legislature of the state regulating admission to the Bar would be declared unconstitutional for the reason mentioned by Mr. Norris in his paper ; that they were the officers of the court, and it was part of a judicial function—both the admission of attorneys and the disbarring of attorneys—and therefore it was necessary for the Pennsylvania Bar Association to recommend to the Supreme Court the question of adopting a rule to appoint Bar examiners and to fix the standard by rules of court, and that the examiners should spring entirely not from the statute, but from the rule. That has been done, and I think on the whole has been satisfactorily done. The practical difficulty of doing it without a statute in our state, which I have no doubt would be met in other states if the same method was adopted, was that the Supreme Court can under its own theory only admit to its own court. Therefore the rules for admission only apply for admission to the Supreme Court of the state. A student, therefore, graduating in the law department of the University

of Pennsylvania, or in any other law school, has to take the examination of the law school, the examination fixed by the Supreme Court of the state, and then an examination before the local court where he desires to practice, or the local court may, if it chooses, admit him on the Supreme Court's examination, but they may examine him a third time.

On the whole, however, the point which I wish to emphasize is that the suggestion contained in Mr. Norris's paper has worked well in Pennsylvania.

Now, may I say a word on the very interesting paper of Mr. Gilmore. It did seem to me that, irrespective of whether you should try to develop what Mr. Terry has emphasized, or try to create a school of jurisprudence, which perhaps rather unconsciously was the emphasis of Professor Gilmore, I think it is of vital importance to the future of legal education in this country that the university trustees and presidents realize, as Professor Gilmore and Mr. Terry both agree, that legal education is an essential part of university work, and that the university president has as much obligation and the university trustees as much duty to take a vital interest and to have the resources of the university back of the law school as back of any other department.

I do feel that I may not have entirely grasped that portion of Mr. Gilmore's paper which dealt with the subjects that should be included in a law school course. My own experience would seem to emphasize this fact: You desire, for instance, to extend your law school course so as to include as one of your electives, we will say, a course on international law. Now you already have in the university, in the college department, a course on international law, and the practical problem that comes up to the administration of the university is this: Shall we duplicate the course and give another course in the law school? Shall we adopt the course in the college, or shall we ask the college to abandon its course and follow Mr. Gilmore's suggestion and give the course on international law not only in the law school, but in the college? At the University of



Pennsylvania we have faced not exactly that problem, but substantially a similar one, and we have found from our practical experience this: You have a college faculty and they have certain ideas of how subjects should be taught. You have a law school faculty, and they have other ideas of how subjects should be taught. The experiment of having our men go over to the college and teach from the college point of view was not a success, and we have always felt that to have college professors, trained largely among undergraduates, teaching our students international law or the Roman law, would not be satisfactory to us. Therefore, I am not sure, that if the scope of legal education is to be enlarged along the lines of Mr. Gilmore's suggestion it will not be necessary to have all subjects given by members of the law school faculty. But I do not believe that this will be satisfactory to the college. Therefore you must determine the subjects which you want to give in your law school course and then give them to law students by professors who are members of the law school faculty. The resulting duplication between some of the courses in the law school and in the college is necessary if proper educational work in the law school or in the college is to be accomplished.

Lucien H. Alexander, of Pennsylvania:

Unfortunately it was not my privilege to be present and hear the papers this afternoon, but from a remark dropped by the Chairman as I came in I inferred that the question of the powers of the legislature with reference to admission to the Bar was under discussion, and, as a member of the Pennsylvania Bar Association's committee to secure the establishment of our State Board of Law Examiners, I may be permitted to state that I do not think our committee was of the opinion that the legislature did not have the power to prescribe the qualifications of admission, but rather that it was unwise and in our state unnecessary to go to the legislature; that if we once allowed the legislature to feel that it had any sort of control over admission to the Bar there was no telling where it might end. I think we reached this conclusion; that the legislature, acting

under the police power of the state, has the right to prescribe educational qualifications, even the moral qualifications of men coming up for admission to the Bar, and that it is the function of the courts, acting judicially, to determine whether or not an applicant is within those qualifications. We were of opinion that the Supreme Court of Pennsylvania, under the Act of 1836, had jurisdiction to prescribe the qualifications, so we merely memorialized the Supreme Court, our highest appellate court, to establish a State Board of Law Examiners as an assistance in determining the qualifications. The court took this view and created the board without any specific action on the subject by the legislature.

The Chairman :

This has been a very interesting discussion and I regret that time does not permit of its longer continuance.

We have a paper which has been written by George W. Wall, Chairman of the Illinois State Bar Examiners, entitled "The State Bar Examiner and the Law Schools."

In the absence of the author, Mr. Nathan W. MacChesney, of Illinois, has kindly consented to read it.

The paper was then read.

*(The Paper follows these Minutes.)*

Nathan William MacChesney, of Illinois :

I should like to call attention to one section of the paper in which the writer expresses the opinion that much of the poor showing of applicants for admission to the Bar at the examinations comes from reliance upon the case method of instruction and suggests, in order to remedy this defect, that a study of standard text books *preceding* the course, under the case method, would be advisable. The friends of the case method of instruction, who now number practically all of the legal educators as I view it, will agree with me when I say, in my opinion, the writer is mistaken. The *mere* study of cases has failed to a considerable extent and has shown a very great weakness as a training for active practice at the Bar. I am

aware that legal educators, generally, will perhaps disagree with this statement.

It seems to me the ideal method, preserving all of the advantages of the case system and the other methods of instruction, is the concurrent study of a small text book, or rather full outline, and a selection of cases, making all assignments for class work from the latter, so that it is really made the basis of instruction, while the student has the advantage of the coherence in his knowledge on the subject coming from the use of the text in conjunction with it.

No one familiar with legal education today, I suppose, would seriously contend that any other system compares in general efficiency with the case method of instruction, but its friends should recognize that it has its limitations and should be supplemented in certain respects in order to meet fully the needs of the students, who expect actually to practice at the Bar, and are not taking the course as a means of general culture or as a preparation for work as mere legal teachers.

Pardon me, if I mention an example of what I regard as a splendid illustration of the ideal method; the use of the two volumes of Keener's Cases on Contracts and Harriman on Contracts as a collateral text. After an observation of the work of scores of teachers in various courses in many of the leading law schools I have seen no more effective work done than with such a combination under a competent instructor in the Northwestern University.

The Chairman :

Is there any further discussion on this paper? If not, new business is in order.

Lucien H. Alexander, of Pennsylvania :

I have a suggestion to throw out, not in the form of a motion, but rather to ascertain the views of the Section. There is great lack of uniformity in the various states with reference to rules of admission. Some states have excellent rules on some points, while on others they are totally deficient

in important particulars. Now, it has occurred to me that it might be advisable to have a committee of this Section draft a set of what might be called ideal or standard admission rules, with explanatory notes emphasizing important provisions, and which when finally approved and adopted may eventually be recommended by the American Bar Association as a guide to states desirous of securing the best possible system for admission to the Bar.

The Secretary :

The remarks of Mr. Alexander and those of Mr. Keysor and these two papers on the State Bar Examiners all suggest the very great importance of the State Bar Examiners and the law school teachers coming to a clear understanding of what each of them is trying to do. I believe the state board of law examiners in any one state can do more to uplift the cause of legal education in that state than all its law schools together. It seems to me that it would be well if Mr. Alexander would put his suggestion into the form of a motion and possibly broaden its scope a little. I think that we should move towards getting into touch with the various boards of State Bar Examiners and arriving at some understanding as to the common ideals in legal education.

Lucien H. Alexander :

Then I will move that a committee of seven be appointed by the Chair for the purpose of drafting a set of rules for admission, which, if adopted and approved by this Section, may be regarded as standard rules.

The Secretary :

I will second that motion.

The motion was adopted.

The Chairman :

I presume that the appointment of this committee will be referred to the incoming Chairman of the Section.

The committee was subsequently appointed as follows :

Mr. Lucien H. Alexander, of Pennsylvania.

Mr. Lawrence Maxwell, Jr., of Ohio.

Mr. Wesley W. Hyde, of Michigan.

Mr. George W. Wall, of Illinois.

Mr. L. H. Perkins, of Kansas.

Mr. Frank Irvine, of New York.

Mr. H. H. Ingersoll, of Tennessee.

The Section then adjourned *sine die*.

CHARLES M. HEPBURN,  
*Secretary.*

# LEGAL EDUCATION AND THE FAILURE OF THE BAR TO PERFORM ITS PUBLIC DUTIES.

CHAIRMAN'S ADDRESS

BY

WILLIAM DRAPER LEWIS,

OF THE UNIVERSITY OF PENNSYLVANIA DEPARTMENT OF LAW.

The function of a profession as such is to perform some service vital to the well being of the community. The function of the legal profession is to administer justice. Whether at any particular time in any particular country that service is being efficiently performed must be tested by the answer of the facts to three questions. First: Are the ethical standards of the members of the profession clear and tending to improve? Second: Does the law, whether expressed in the development of "cases" or legislation tend to correspond to the felt sense of right in the community? Third: Is the law administered with reasonable certainty and dispatch?

If the first question is answered in the negative, it means that a large and increasing number of the profession are preying on the weaker members of the community. If the law does not satisfy the community's ideal of justice, class hatred and the instability of the whole social organization is the result; while the evils which flow from uncertain or long delayed administration of the law are of a similar character.

How does our profession answer these three tests of efficiency? Can any of us say that, taken as a whole, we have clear cut ideals of professional right conduct, or purge ourselves of those who fail to live up to proper professional standards? The universal presence among us of the ambulance chaser, unrebuked by our courts, and the fact that we practically never disbar a lawyer, except after he has been indicted and

convicted for a criminal offense, are significant commentaries on our ethical standards and the way in which we guard what we are pleased to call the traditions of the profession. The question is not whether the Bar is worse from a moral point of view than it was; it is enough to make the answer we must give to the first test of efficiency doubtful, that we do not insist upon a high standard of conduct among our members, and that in this respect the observer finds few, if any, signs of improvement.

On the other hand, if we turn to the law as found in our decided cases, we can with pardonable pride maintain that our courts meet with ability the new conditions as they arise. For instance, the way in which legal questions arising out of trade and labor disputes have been dealt with show that we do possess the capacity to mold our common law to new conditions. In this respect, I believe, the present compares favorably with any period of English or American legal history. In legislation on legal subjects we have not as a profession shown any marked ability, either to initiate useful reforms in substantive law or to express the existing law in statutory form. Whether a beneficial civil code can be formed is doubtful, and it is therefore no reflection on the profession that, with one or possibly two exceptions, the attempts at such codification have apparently failed to prove satisfactory; but it may fairly be a subject of adverse comment that in the last fifty years we have not in America initiated a single legislative reform in substantive law.

On the side of the administration of the law, both civil and criminal, our failure to perform the service which the community may of right expect is almost complete. The two fatal words "uncertainty" and "delay" are interwoven in all our methods of doing legal business. The practical result of our antiquated systems in the complicated conditions of our social and business life would disgrace the early part of the nineteenth century, when practically all business was performed in a cumbersome way, but to a modern business man,

accustomed to modern and efficient methods of dispatching business, the delays and uncertainties of our administration of the law have become intolerable. They at the same time afford a sure refuge to the unscrupulous. In view of the just reputation of our people for quickness and efficiency, this grotesque condition of the administration of justice would be laughable if it were not so serious. The absurdities of the administration of our criminal law have allowed the hysteria which exists in a more or less positive form in every community to find outward expression in the crime of lynching; the delays of the civil law, tending to deprive the economically weak of justice, have been a potent factor in creating that widespread disrespect for law and distrust of courts which renders it increasingly difficult for us to meet the new and complicated problems of our social life.

Though the answers to the tests of the way in which the legal profession is performing its service to our communities are not all unfavorable, taken as a whole the word *failure* predominates. Disguise it as we may, our profession is not administering justice with efficiency.

If we look more closely at the lines along which these failures occur, we will find that the lawyer is found wanting in the performance of his public duties rather than in his private duties. For instance, the lawyer as an individual practitioner performs his whole duty if, taking existing methods of doing legal business, he conducts his client's case with skill. The judge performs his whole duty to the parties before him if he properly applies to their case the existing principles of law. But on the profession as a whole falls the duty of providing methods of practice which result in the quick and certain dispatch of legal business. This last is an example of what we may call the public duty of the profession as distinguished from the private duty of individual members. The public duty is a duty which cannot be performed by the individual lawyer in the course of his practice, but must be performed, if at all, by associate action. My point is that it is along the



line of associate action on legal public matters that we fail, rather than in those duties which depend solely on our own efforts. The public do not complain of poor lawyers, but of the delays and uncertainties of the law. The common law, as developed by our courts, each acting separately, meets new situations as they arise, but where concerted action to effect legislation is demanded, we fail. Taken as a whole, the conduct of individual members of the Bar represents a fairly high standard, yet, when that standard is violated by individuals, there is not, except in extreme cases, any associate action taken to discipline the offender. In short, in a world marked for increasing efficiency in organization, the lawyers of our country exhibit the anomalous spectacle of a body of persons apparently incapable of efficient co-operation for public ends.

When the individual makes a failure of his life, he usually blames external conditions—the fates were against him. If that which happened to Jones had happened to him, he, like Jones, would have been a great success.

So with the apologists for the failure of our profession to perform its appointed work. Take our failure to force individual lawyers to conform to a proper ethical standard. It is said that when our cities were small it was comparatively easy for the leaders of the profession to come into contact with all members in active practice, and hold a strict rein over their conduct, but that today, in cities like New York, Chicago or Philadelphia, this is impossible. The explanation sounds plausible, but London is nearly as large as all those three cities combined, and the supervision of the Bar over their individual members down to the smallest detail of professional conduct is most strict. It is true that the increase in the numbers of the profession may require different machinery to deal with cases of improper professional conduct; but is not a test of efficiency the ability to meet new conditions?

Again, it is said that the delays of the civil law are due to the complicated nature of our business transactions. But do

not these delays occur in the simplest cases? Our business transactions are no more complicated than those of England, and yet the Englishman has succeeded in devising a system which disposes of legal business with reasonable celerity. But I can hear the apologist replying that England with a single Bar can carry out reforms; but for us, who are merely a collection of innumerable state and county Bars, it is impossible. It may be admitted that the fact that we do not have a single system of courts, and therefore necessarily have many Bars, renders it difficult for us to adopt a single plan to expedite justice, or deal with other professional problems, but the almost universal failure of the Bar of any one of our states to adopt any reform which goes to the root of the causes of the delays and uncertainties of our legal proceedings is not explained by the fact that there cannot be a Bar of the United States in the sense that there is an English Bar.

Again, it is said that our country is new, and that our problems are therefore more difficult. Yet our country can only properly be said to be new in spots, and the failure to maintain professional standards and expedite legal business is as great in the Eastern, as in the Western states, if not greater. England, too, has colonies in which all the conditions of a new country exist; yet it is true of these colonies, as it is of England, that the people are satisfied with the celerity of administration of the law, both civil and criminal. In the colonies, as in England, in the last seventy-five years not a single life has been sacrificed to mob violence, a fact which bears eloquent tribute to the confidence of the people in the courts.

Lastly, if you will talk to a lawyer on the reasons which make for greater efficiency in the administration of the law in England, he will usually point to the high salaries of English judges, and the aristocratic origin of the English barristers as a class, as the true cause of efficiency on the other side of the water. To one who doubts, as I do not, the ability of a democracy to govern, this last reason appeals with almost

conclusive force, yet even to the admirer of aristocracies in this instance the reason disappears on examination. English judges were better paid, relatively to the standard of the rest of the community, in the days of Lord Eldon, than they are now; yet, the crying evil of the chancery of that day was the very delays which are the worst features of our own legal administration. Again, the Bar of England never was distinctly aristocratic. It is less so now than ever before. Its membership is open to anyone; English citizenship is not even required. One of the leading barristers today is an American citizen. Indeed, the efficiency of the administration of law in England seems to have increased as the Bar has become more and more democratic. If an aristocratic Bar meant efficiency, why would not an aristocratic army mean efficiency? If the national administration of democratic America compares, as I think it does, favorably with that of England, why not our administration of law? Our medical profession is forging ahead of their English competitors, why do we of the law lag behind?

Though an individual, when he makes a failure of his life, turns for an explanation to external conditions, the real root of the matter usually lies in his character, not necessarily in his bad character, but in the fact that his character does not conform to the necessities of his external circumstances. So it is with any group of men—as the members of the legal profession. Our failure to meet with efficiency what I have called our public duties is not due to external conditions, but to our character as professional men. By this “character” I mean our ideals of our professional duty. The reputable American lawyer, if he is typical of his class, has an ideal of correct conduct towards clients, towards the courts, and towards the other members of the Bar. But here his ideals usually end. He is blind to any public duty of the profession towards the community as a whole. Even his comparatively feeble efforts to enforce some standard of professional conduct, or to relieve some local delays in the administration of justice

by the establishment of new courts, seem to be largely dictated by the feeling that a Bar composed in part of criminals, or courts having a great congestion of business, increase the difficulties of practice. The public interest is not, apparently, a real factor. This blindness to the existence of public obligations is so general and so absolute, that even in this presence I may be pardoned for giving a few illustrations.

Besides this American Bar Association, there is a State Bar Association in the majority of the states, and innumerable county organizations. But as far as I can ascertain, no one of them ever appointed a committee to examine any question relating to the care of criminals. Even in efforts to deal with the trial and punishment of juvenile offenders, the community has gone unaided by any effort on the part of these numerous legal organizations. The most unobservant person who enters at all into the life of the community in which he lives must have had forced upon his notice the growing dissatisfaction with the delays of justice. The crime of lynching has become a menace to the stability of the whole administration of the criminal law. Other common law countries, England and her colonies, have made great improvements in their legal administration, and have been working successfully under these improvements for more than thirty years. While these facts have been pointed out by individuals at our meetings, few organized attempts have been made by this or other Bar associations to deal with the delays of criminal or even civil practice, or with the "lynching" problem, and while occasionally committees have been appointed to investigate the causes of the delays in the administration of justice, we cannot say that a single important association has as a body seriously taken up the work of improving the administration of the law.

Or, again, no one of us doubts that the poorest classes of the community, especially the very poor in our large cities, are as a class largely denied justice, partly through their own ignorance, but in a still greater degree, by the class of attorneys who take advantage of that ignorance. I am well aware of

the practical difficulties in the way of the establishment and maintenance of what is called "legal aid." Whether the problem presented by the administration of justice among the very poor should be met along the lines followed on the continent of Europe or on lines developed by such a society as the New York Legal Aid Society is for my present purpose immaterial. The striking fact remains that the community has to face this problem of legal administration without the aid of any legal professional organization. It never occurs to our Bar Associations that this is their problem, and that they owe a duty to the community to try and solve it.

Instances might be multiplied, but I think those that I have given prove my point, which is that our failure as a profession to perform what I have classified as our public duties is due principally not to external conditions, but to a total absence of any idea that there exists any obligation on the part of the Bar towards the community. As a profession, we lack any idea of responsibility which cannot be classified as a duty towards a court, a client or a fellow lawyer. The lawyers have, as a class, a real sense of duty towards clients, but little or no sense of any duty towards the community as a whole, for the better administration of justice. We are in exactly the position today that the medical profession would be in if they assumed that action by medical societies should as a matter of course be confined to problems connected with the cure of disease, and that they had nothing to do as organizations with the prevention of disease by communities, and no position of leadership which it was their duty to assume in matters pertaining to the general health of the community.

The same medical profession which a hundred years ago was recognized as a profession, only to cast a shadow on the social position of those that followed it, is today performing its functions to the satisfaction of the community. When the history of the present time comes to be written, it is likely that the reforms and advances in the science of the protection of communities from disease will be cited as one of its chief

glories. Why this success in the performance of public duties where we are failing? It is not in individual character or ability. Man for man, we are as able as they, and as moral as they. Is it not rather that they have developed, in a way we have not developed, an ideal of communal responsibility? Or, again, do not our English brethren of Bench and Bar perform the function of the administration of justice better than we do, and to the entire satisfaction of the community, not because they are better lawyers, but because they possess, in a degree that we do not, a sense that they are members of a profession which has active public duties to perform?

Assuming that I am right in saying that we are failing as a profession, in this country, in the performance of services which the community have a right to expect that we will perform, and that this failure is along the line of our public, as distinguished from our private duties; and, furthermore, assuming that this failure to perform our obligations to the community as a whole is due to the almost total absence of any conception that we have any duties of this character, it becomes a task of no great difficulty to show that the absence of any feeling of public responsibility among the members of our profession is due to defects in our legal education.

We have three systems of legal education in this country—the office system, the night school system and the university law school system. The first needs no explanation. By the night school system I mean that system which prepares a man for the Bar by having him attend law classes, the requirements being arranged on the assumption that the student pursues some other occupation during the period of his attendance. Many such classes are connected with universities, but this fact does not make the system a university system of instruction under the above classification. By a university system of legal education I mean a system which requires the student to be in residence at a school which maintains not only class rooms, but a library for study; which has not only lectures on law, but a resident corps of

men devoting their lives to legal teaching and research, and which demands of their students, by occupying their entire time, exclusive devotion to the work of the school.

It is not my present purpose to go into the relative merits of these three systems from the point of view of the preparation which each gives for the work of a lawyer in the conduct of litigation. My present purpose is to point out that each fails to produce lawyers who come to the work of their profession with any idea that the profession, as such, has public duties to perform. That the office system and the night school system should fail in this respect seems the inevitable result of the ideals which keep these systems alive. The system which permits a man to come to the Bar after a period of registration in the office of a practitioner of his own selection is based on the idea that all that lawyers, as such, need to know are the matters which come up in the private practice of the law. This very conception negatives any idea that the profession has any public duties to perform in the sense in which I have used the word public. The office system assumes that taken as a whole the profession has nothing to learn; that the skill, knowledge and morals of the average member of the Bar in active practice leave nothing to be desired. For it is to be remembered that it is with the average member of the Bar of any community that the office students as a class register, not with the best or the worst. If the average is good in ethical conduct, the student result will in that respect be good. If the ideals of the practicing Bar taken as a whole are low, the ideals of the student product will be low also. As well may a man try to raise himself by his boot straps as to have a profession elevate itself morally or intellectually by such a system. If, as in England, the student registered in and became at once a part of a strong Bar association, organized for the purpose of maintaining and uplifting professional standards, then we might expect progressive improvement from generation to generation; at least in moral tone if not in intellectual equipment. But under the office system, as we know it in this

country, no improvement is possible. The best proof of which statement lies in the fact that while for generations this system has been the recognized system for preparation for the Bar, no marked improvement in morals or efficiency has taken place, if indeed, as many contend, there has not been a deterioration.

That the night school system fails to produce a class of men who, however honorable they may be as individuals, fail to grasp the fact that the profession has obligations to the public to perform is also inevitable. There are many night schools created and maintained by charlatans for the fees. Were they all of this class even our ill-organized profession would have prevented their filling the nominal ranks of the profession with their dupes. The system taken as a whole is maintained, however, not by charlatans, but by those who have the interest of the profession sincerely at heart. As a system of legal education, the night school system is a grotesque perversion of what at bottom is an idea on which much of our progress as a nation depends. This is the idea that every man should have a chance to enter any occupation he desires. Here are a host of poor young men. They wish to be lawyers; it is assumed, and doubtless correctly assumed, that many of them will never come to the Bar if they are obliged for three, or even two years, to devote their entire time to legal studies. *Ergo*, some means must be found to get them to the Bar without requiring their whole time. If we cannot fit them very well, we will do the best we can. And so nearly all our large cities witness overworked lawyers and judges of our highest courts sacrificing, sometimes for good pay, but often for little or no compensation, one or more of their evenings each week, in order to instruct young men in the rudiments of law, who in the daytime are engaged as stenographers, clerks in government and private employ and in other occupations. A night school here and there may try to give something not required by the Bar examination of the state in which it is situated, but the very conception which lies at the root of the whole system predestines to failure all such efforts. That con-



ception is—we must not ask of the young man who desires to be a lawyer too great a sacrifice. The important thing is to get him to the Bar so that he may have a chance.

And may we not say in passing that the idea that every man should have a chance is a good one. Let us hold fast to it. But remember that the chance to which you or I or anyone is entitled is the chance to become as good and useful a member of the community in the line of life which we elect as we are capable of becoming. It is not a right to a chance to become a second class man when we have it in us to develop into a first class man. To be specific, we have not the right to a chance to become any kind of a lawyer with any kind of ideals, but a right to a chance to become intellectually the best lawyer we are capable of becoming; and morally, for we have a right to a moral as well as an intellectual opportunity, the right to a chance to come to the Bar with those ideals of our professional obligations which will lead to the efficient performance of our moral duties towards clients, the court and the community.

Let us now turn to our university system of legal professional education. The profession is justly proud of the work of several of our leading university law schools along purely intellectual lines, especially their work in common law and equity. Situated at seats of learning, many of which are old enough to have "traditions," and an "atmosphere," one would imagine that students would be instilled with professional ideals which would lead them as a class, not only to have a lively sense of their duty to maintain and see that others maintained the highest professional standards in their relations to courts and clients, but that they would also realize the public functions of the profession, and be alive to those general problems of the administration of justice which the community have a right to expect that the profession make an earnest effort to solve.

I think we may admit that the students of our best university law schools do graduate as a rule with a high sense of their personal obligations towards courts and clients. This is partly

due to the class from which the students are recruited, partly to the effects of the prior college education which the major portion of them have had, but mainly to the daily personal contact with the resident members of the law faculty, who are usually men not only of legal ability, but of high moral tone. Indeed, the modern well-equipped university law school tends to preserve that personal contact between student and high-minded lawyer which was the best feature of the old office system, when the student registered with a man of high tone, who had leisure to come into personal contact with him. It may also be admitted that the product of our university law schools have, as a class, a feeling that the tone of the profession should be preserved by disciplining those who fall below its standards, and personal contact with the younger members of the Bar who are the products of our universities leads me to believe that as they come to leadership in our profession we may expect to see greater activity among boards of censors. On the other hand, the graduates of our best university law schools seem as utterly lacking in any conception that the profession has any duties toward the community as a whole, or that they as individuals need concern themselves with any problems not met with in private practice, as are the products of the lawyers' offices, or the graduates of the night schools. Here the fault lies not with the nature of the system. The student of the type of which I speak does not ask that the faculty prepare him to pass a Bar examination in the quickest possible time, or allow him leisure to work at other things while pursuing his legal studies. He comes prepared to devote himself exclusively to preparing for his life-work. If he graduates with ideals that do not fit in with what the world wants from our profession, it is the fault of the faculty, not of the student. Turn to the curriculum of any one of our great university law schools, and the cause of the failure is not far to seek. One who is familiar with the ideals which prevail in the best schools of other professions is instantly struck by three things: First, the thorough way in which the field of private

law is covered; second, the meagre way in which public law is dealt with; third, the entire absense of any course from which the student can gain a knowledge of or interest in any problem relating to the administration of justice, which does not tend to answer a question which may be stated in the following form: "If a client comes into your office and brings the following case, how would you advise him?" Look at the catalogue of any one of our great schools and you will see at a glance that the faculty have one and only one conception of their duty towards their students, and that is to turn them out able to answer any legal question likely to be put to them by private clients. Now I do not wish to belittle for a moment the absolute necessity of training the law student to practice law in the world as it is. It goes without saying that it is the duty of the lawyer to serve his clients not only faithfully, but efficiently. But I do take the position that the whole duty of a lawyer is not done when, taking law and practice as it is, he gives his clients good advice, prepares his cases thoroughly, or as a judge decides them, in view of the law, properly. There is, as I have tried to show, a public duty of the profession towards the community. The problem—How should I try this case?—and the problem—How should cases be tried?—are distinct problems. One must be dealt with by the lawyer acting as an individual, the other by lawyers acting together. But lawyers as a class cannot be expected to meet the problems which confront them as a body of men, charged with certain public duties, unless in their student days their instructors have recognized the existence of such problems and taken pains to see that the students had some knowledge of the principles on which they must be solved.

Take some examples of my meaning. We have in all our university law schools courses in practice. Without exception, as far as I am aware, these courses either deal exclusively with the present practice in a particular jurisdiction, or with the essentials of present practice in our state jurisdictions. Such courses, it is conceded, are a necessary part of the legal

curriculum. Any law student intending to practice law should know his profession as an art as well as a science. But why not also a course on practice dealt with from the point of view of the community—a course which would deal with the efforts made in different jurisdictions to expedite justice, or improve the administration of the civil or the criminal law, and the result of these efforts? Such a course would at least give us a body of men who know what was going forward in the way of improvement, and we would not be confined to occasional papers at Bar meetings to give us information and arouse our interest in the swift and certain administration of the law.

Or, again, many of our schools have courses, or extra lectures, on "Conveyancing." These courses deal with the methods invoked in a particular jurisdiction, or with the general methods followed in those jurisdictions where the pupils expect to practice. Again, I have no criticism. Such course prepares the future lawyer for his work. But still, the question arises—Is the duty of the profession done in respect to conveyancing when we draw proper deeds for our clients?—or, as a profession, have we a duty to see to it that the system in force in our community is the most efficient system which in view of our circumstances can be devised? And if we have this last duty, how can we expect that duty to be impressed on the lawyer, unless in his student days those who regulate the curriculum he must follow give him an opportunity to find out the changes in the system of conveyancing which have taken place in nearly all civilized countries in the last fifty years? Such a course might or might not lead him to be an advocate of the "Torrens system," but at least it would tend to enable him to take an interest in a problem which it is the duty of our profession as a profession to take an interest in.

I have given two examples. If time permitted, others might be added. Enough, however, perhaps has been said to enable you to catch my meaning, which is that our great universities have an opportunity which is not open to the other

systems of legal education—the office system, and the night school system—to produce a body of lawyers who, while effective practitioners, are also intelligently interested in those problems which we as a profession must meet by associate action, and that those of us who, like myself, are responsible for the curriculum of these schools are neglecting our opportunity.

But I hear some one say, You cannot get a body of young men bent on learning law so as to make a living, to spend time on matters not directly pertaining to private practice. And why not?—I ask. The great medical schools of the country have in the last few years done for the medical profession exactly what I am asking the great law schools to do for the legal profession. They have added to their curriculum a number of courses which bear on the public functions of the medical profession,—that is, the function of preventive medicine, and the causes, as distinguished from the cure, of disease. And the establishment of these courses has had to meet the same kind of objection that our law schools may expect if they attempt to add to their law courses subjects of the character I have indicated, namely, that such subjects had nothing to do with the practice of medicine, which was the cure of the man already sick.

Again, I hear the objection: three years is a time all too short to fit a student to become an efficient practitioner, and addition along the line indicated means a course of four years or more. Suppose they do? The medical profession almost universally requires four years, and hospital practice besides, and yet the need for doctors is being met. Remember that the community is not interested in the number of years which it takes to make a doctor or a lawyer, but in the efficiency of the finished product. If four years, as in medicine, or five years as on the continent of Europe, are really necessary to make a good lawyer, the public will have no sympathy with hurrying out in three years an unfinished product.

Of course, any radical addition to the scope of legal teaching means additional expense which may not be, and perhaps ought not to be, met by additional fees. If our present university law schools should undertake to turn out men not only prepared to practice law, but fitted to take their share in progressive movements for the improvement of the administration of justice, the schools must have endowments adequate for the work. Today these endowments do not exist. But once let our great universities prove to the communities in which they are situated that there is a necessity for widening the scope of their law teaching, and that if the scope is widened they are prepared to do work which the community has a real interest in having done, the endowment will come. Money has flowed towards our great medical schools because they have proved that the medical profession can do more for the world than give pills to the sick. Our great law schools can obtain like endowments when they can show that they are doing something more for the world than hurrying out men who can win cases. Pill-giving and case-winning are essential, but the purse strings of the community unloose only when a profession proves that it can do something for the permanent amelioration of social conditions.

Our ideals shape our actions. The lawyer is no exception to this rule. The lawyers of the United States fail to perform what I have called the public duties of the profession, while the English lawyer and our brethren of the medical profession to a large extent, perform their public duties, because they have, and we have not any idea that we have such duties. This lack of perception has its root in our legal education. For the law offices and the night school there is an adequate excuse. But for the university law school there is no such excuse. If, as a profession, we are awake to our failure to perform our public duties, it is the small class of men who are devoting their lives to legal teaching who must point the way.

From a professional point of view, the need of the hour is a body of lawyers who know something beyond the practice of

their profession; who are interested in the administration of justice in its broadest sense; who can turn with effect to those legal problems which call for their solution on associate action. I believe if the faculties of our universities widen their curriculum along the lines indicated they can create a university law school system which will produce a body of lawyers whose ideals and, therefore, whose actions, fit in more closely than do the ideals of their present product with the needs of the modern world.

## THE RELATION OF THE UNIVERSITY TO PROFESSIONAL INSTRUCTION IN LAW.

BY

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The fact that of the ninety-nine law schools in the United States seventy-nine are either integral parts of or are affiliated in some way with universities, and that these schools have in them 14,057 students engaged in the study of law<sup>1</sup> and prepare for the Bar a large number of those admitted each year, justifies the discussion before this Section of the Association of the question of the relation between the university and instruction in law. The subject in various aspects has been presented here on previous occasions, and so far as this paper is a plea for a more thorough and a more liberal preparation for the Bar it will be but a repetition of what has been well said before by others.

If one can judge from the numerous papers, reports and discussions before this and State Bar Associations, and from articles in legal and other periodicals, there is a widespread opinion that, in the recent past at least, the preparation for the Bar afforded in law schools was, and even at the present time is, narrow and inadequate; that the lawyer of today is in need of a more liberal and extended preparation in order to hold, and possibly to regain, the important and influential position he has so long held in the community, and to be a capable counselor in the solution of the many complicated problems of modern social and industrial life.

With at least one-fifth of our entire population engaged in the work of education, either teaching or being taught, with the multiplication of public and private schools, and the

<sup>1</sup> Report of Commissioner of Education, 1902-03.



increasing accessibility of educational advantages, the standard of intelligence is rapidly rising. The lawyer, doctor and minister no longer stand out pre-eminent for erudition. The traditional learned professions of law, medicine and theology have been joined by others equally learned. The manifold activities of today are being carried on by a multitude of highly trained specialists who may properly be regarded as members of learned professions. Even business and farming are now conducted by professionals, many of whom have been trained in the university. Business, farming, manufacturing, engineering and mining are no longer pursued by those who have learned the vocation only as an art and who practice it by rule of thumb. Such callings are studied as sciences, with the thorough and exacting methods of scientific investigation applied to them. The prospective farmer considers it worth his while in preparation for his practical work to spend several years in the study of the chemistry of soils, the nutrient value of grains and grasses and the relative value and efficiency of various breeds of animals. The young man going into business no longer regards himself adequately equipped with only the preparation obtained in the ordinary commercial or business school. A comparative and critical study of business methods, of markets, of geographical conditions and of financial and economic theories is coming to be regarded as an essential part of the training of a well-equipped business man.

In medicine, in the ministry, in engineering in all its phases, and in teaching, the demand is for more and better preparation. What is true of these is especially true of the law. The Committee on Legal Education in its report to this Association fifteen years ago said our law schools "should prepare the American lawyer for every part of the broad field in which he may be called on to lead and direct his fellow citizens, whether as a lawyer in the strict sense of the word, or as a party leader, a representative of the country abroad, a director of its finance or its education at home, as judge, as legislator, or as statesman."

That great progress has been made towards meeting this demand since the above report was written no one who has followed the course of legal education for the past decade can doubt. That much remains to be done, that there are conditions which are a source of mortification to the profession is equally clear.

The improvement which has come about is due largely to two causes. The recognition of the need for a more general and extended preliminary education and the disposition to secure this by increasing the amount of such education which must be accomplished before being eligible to enter upon the study of law in a law school or to attempt the examinations for admission to the Bar. The second cause of improvement is the growing tendency to regard the law as a science and to teach it in a broad and comparative way as an integral part of the large subject of jurisprudence. While the "inveterate delusion that law is a handicraft to be practiced by rule of thumb and learned only by apprenticeship" in the office, or in schools so intensely utilitarian as to afford little more than an apprenticeship, still exists in certain quarters, nevertheless, the success of a number of our law schools, presenting law in this broad and scientific way, in sending to the Bar graduates competently equipped for practice, is convincing a rapidly increasing number of lawyers that the common law "is a science, that it rests on valid grounds of reason, which can be so explained by men who have mastered its principles as to be thoroughly understood by students whose aim is success in the practice of the law."<sup>1</sup>

Accompanying this recognition of the true nature of law and the need of a presentation of it according to its nature is the further recognition, equally important, that such presentation can best be made in the university by professional teachers who are not and who may never have been practicing lawyers. There are many who now believe that what qualifies a person

<sup>1</sup> The Teaching of English Law at Harvard, by A. V. Dicey, 13 Harv. L. Rev. 424, Contemporary Rev. (Nov., 1899).

"to teach law is not experience in the work of the lawyer's office, not experience in dealing with men, not experience in the trial and argument of causes, not experience, in short, in using law, but experience in learning law."<sup>1</sup> This does not mean that no practicing lawyer is qualified to teach law. So far as law schools attempt to give instruction in procedure, such courses can be effectively taught by persons in the active practice. There are exceptions, but for the most part an adequate presentation of the law requires the best energy and the entire time of the teacher, something which a lawyer or judge, engrossed in the demands of litigation, can rarely give. Nor is such teaching likely to be done adequately by one who has spent his best years in practice and turns to teaching late in life. The law teacher should be an expert in legal and juristic learning pertaining to a particular field and be skilled in the art of presenting his learning to others. The teaching of law requires peculiar preparation and experience just as much as does the active practice. A person who has matured in one field is not likely to succeed in the other.<sup>2</sup>

Without overlooking the importance of the question of the scope of the general education which should precede the study of law and the need for its further agitation, it is the purpose of this paper to emphasize the importance to the cause of the legal education of a still further recognition of the real nature of law, of its relation to the larger subject of jurisprudence and of the need of its presentation in a broad, comparative and historical manner as an integral part of university instruction.

<sup>1</sup> Professor Langdell's address, Harvard College Anniversary Exercises, pp. 84-86.

<sup>2</sup> "It is the simple truth that you cannot have thorough and first-rate training in law, any more than in physical science, unless you have a body of learned teachers; and you cannot have a learned faculty of law unless, like other faculties, they give their lives to their work. The main secret of teaching law, as of all teaching, is what Socrates declared to be the secret of eloquence, understanding your subject, and that requires as regards any one of the great heads of our law, in the present stage of our science, an enormous and absorbing amount of labor." University Teaching of English Law, J. B. Thayer, 9 Harv. L. Rev. 174.

It was under the influence of the university that law was first recognized as a science, and it is to the university that we must look for further recognition and for the complete development of the proper attitude towards the subject. If law is to be taught in universities, it can be presented only in the way in which the university must present every subject it undertakes to teach, in a manner broad in scope and liberal in spirit. "Our law must be studied and taught as other great sciences are studied and taught at the universities, as deeply, by like methods, and with as thorough a concentration and lifelong devotion of all the powers of a learned and studious faculty. If our law be not a science worthy and requiring to be thus studied and thus taught, then, as a distinguished lawyer has remarked, 'A university will best consult its own dignity in declining to teach it.'"<sup>1</sup> The university cannot permit its professional schools "to be used as mere hothouses to force immature students up to a point where they can just pass the minimum requirements for a license to practice. It is the privilege and the duty of the great body of arts and sciences to render needed assistance in liberalizing and broadening the professional studies."<sup>2</sup> The proper relation, therefore, of the university to instruction in law is the same relation which exists between the university and all of its instruction. The arrangement which formerly existed, and which unfortunately still exists between many of our so-called universities and the law school, by which the law department is regarded as a separate and independent school, conducted on a self-supporting basis with different standards and ideals, should be broken up. The law school should become an integral part of the university and should be conducted in the same spirit and with the same scholarly ideals as other university departments. It should be given the advantage of the endowment and equipment of the entire university. Its instruction should

<sup>1</sup> University Teaching of English Law, J. B. Thayer, 9 Harv. L. Rev. 173.

<sup>2</sup> III Ed. Rev., p. 54, N. M. Butler.

be enriched and liberalized by the most intimate relation with the general instruction in the university in literature, art, sciences, philosophy and history. The general aim of the university law school should be the promotion of scientific legal education, the historical and comparative study of jurisprudence for all university scholars in whatever department of learning. This larger aim need in no way be inconsistent with the accomplishment of its more immediate object, which is professional, and is directed towards the preparation of men for the *practice* of law. The law school must always, indeed, serve the interests of the legal profession and send forth its graduates equipped to *use* the law, but it will effectively serve these interests and be practical, in the best sense of the word, by conducting its instruction in the spirit of the university rather than in the spirit of the trade school.

It is not intended to advocate here that less law should be required of candidates for the law degree or that the law school should cease to make its primary object the serving of the needs of those who desire to prepare for the active practice of law. Nor is it intended to assert that courses in political science, government, economics and similar subjects should be made a part of the law curriculum. What is advocated is the complete incorporation of the law school into the university by the establishment of an intimate and vital relation between the department of law and the university, and the full recognition of the need of abundant opportunity in university law schools to take more law in a more systematic, thorough and extended way; an opportunity open not only to professional students of law, but to all students in the university, whether they contemplate the actual practice of law, or desire instruction in this department as a part of professional investigation and research in other fields, or seek it merely as part of a liberal education. For whatever purpose instruction in law be sought, it should be presented in a way to meet the needs of all university students. The teaching of law as a profession should be no more irrational or unscientific than the teaching of it as a part

of a liberal education or as supplementing and broadening professional work in other fields.

The criticism has been made that law schools are conducted solely for the needs of the future lawyer without regard to the needs of the general students; that in thus centering the attention upon a narrow and utilitarian object the school is neglecting to discharge its proper functions as a part of a great university and is failing to give its own students the best preparation for the Bar.

To meet what is conceived to be a shortcoming in this respect, it is quite common to find in many universities courses in Roman law, modern civil law, public and private international law, administrative law, constitutional law and jurisprudence, and even in contracts, torts, evidence, agency and corporations, being offered in the departments of political science and economics. Such subjects are often taught by persons who have made little or no systematic study of law. The justification for this is that such subjects are either not offered at all by the law faculty, or if they are offered they are presented in a narrow and utilitarian manner wholly unsuited to the needs of general students. There are doubtless teachers of experience in legal education who would meet this criticism by answering that the law schools should be conducted solely for the needs of the lawyers; if general courses in international law, constitutional law, Roman law and jurisprudence are desired for students who are engaged in advanced work in other departments of the university, or courses in elementary law and jurisprudence for general students, or special courses in commercial law and contracts for students in commerce and engineering, let the respective faculties provide such courses according to their special needs. If, however, the law school is to come into vital relation with the university, this answer will not meet the demands of the situation. As an integral part of the university whose purpose is to investigate all fields of human knowledge in the spirit of exhaustive and scholarly research, the law school, if it would maintain its

proper relation to the university and discharge its legitimate functions, cannot investigate its chosen field in any narrow or utilitarian spirit. Not only must the common law of England be presented historically and scientifically, but the curriculum should be broadened so as to include the entire field of jurisprudence and the instruction should be conducted in a spirit liberal enough to meet the needs of all university students. The proper correlation of the courses of the university and the establishment of the true relation between the law school and the university should bring under the direction of a law faculty, composed of men who have had a thorough and scholarly preparation in law, all subjects which can properly be called legal in their nature. The school or department of jurisprudence would be a more accurate description of the university law school. Its curriculum should include, in addition to the courses in private law usually offered by law schools, courses in public and private international law, administrative law, Roman law, modern civil law, elementary and advanced jurisprudence, comparative jurisprudence and legal history. If other departments of the university are in need of special or abridged courses in certain subjects, or are in need of a general and elementary presentation of the law, the law faculty should provide such courses. The best abridgment of a course for elementary or general purposes can be made by the teacher who has treated that subject in a thorough and exhaustive manner. Law should in all cases be taught by teachers trained in the law and not by teachers engaged in other fields who, having need for a special subject of law, prepare what is likely to be an inadequate treatment.

A curriculum thus enlarged and presented in the way indicated could not possibly be completed by any one student during the three years usually spent in residence. It is not essential that the entire course should be taken. The principle of election in professional schools, while still controverted by some, is gaining recognition in many of our best institutions. The manner and order of elections can readily be con-

trolled so that the candidate for the Bar will follow lines most suited to his particular needs, and he will gain the immeasurable advantage of pursuing his legal studies under the direction of a faculty of scholars of broad attainments and in the atmosphere of a school where the entire field of jurisprudence is presented in a manner liberal in spirit and scientific in treatment.

The establishment of this proper relation between the university and the law school can only come about by the abandonment of the idea that legal education must be self-supporting and the placing of such instruction on the same footing as other instruction in the university. If law is to be given as a university subject, it will require for its adequate presentation better equipment, better libraries, more teachers of wide preparation able to devote their entire time to the particular subjects, and all this means more money. One of the great hindrances to progress in raising the standards of legal education has been the necessity of making it pay its own way and, in some institutions, yield a profit.<sup>1</sup> While there are notable exceptions, education, especially professional education, which must be conducted on a self-supporting basis can seldom rise to the highest standards of thoroughness and efficiency. So long as professional education is to be no better than can be self-supporting so long will the standards remain low. So long also as each student is regarded as a pecuniary asset available to defray all or a part of the cost of instruction, and the raising of standards is deterred by considering the influence of such action on the income of the school, just so long

<sup>1</sup> In one state institution law students are required to pay a fee which is adequate not only to defray the cost of maintaining the law school, but which produces a surplus that is used to pay the cost of educating students in other departments of the university. In another state institution certain law courses are offered in the college department of the university and also in the law school. If such courses are taken in the college no special fee is charged, but if taken in the law school a substantial charge is made, although the course in one instance was given by the same instructor.



will progress towards efficient legal education be halting or postponed. The university, therefore, should recognize law as a subject fit to be included in its curriculum and should provide instruction in it in the same way as it provides instruction in other professions, and should permit the law school to share with the other departments the strength which comes from its endowments.

The pursuing of law thus presented as a part of an enlarged curriculum requires for the best results adequate preliminary education. It is generally admitted that a preliminary general education equal to at least a good high school course should precede the study of law. In one institution one year, in two schools two years and in three schools three years of college work are required as a preliminary, and in one school the completion of a college course is necessary before beginning law work as a candidate for the degree.<sup>1</sup>

Without going into discussion of the nature and scope of the preliminary education which should be exacted of law students, it will be seen that in advocating the presentation of law as a university study, with the thorough and scientific spirit of all university instruction, one is necessarily involved to some extent in a consideration of the previous preparation of the students and to insist that ultimately the preliminary education must be equal to that required of advanced students in other departments of university instruction.

<sup>1</sup> In the University of Wisconsin one year of college work in addition to a four year high school course is required; after 1907 the requirement will be two years. In Ohio State University candidates for the law degree must have completed the equivalent of two years of college work. In Leland Stanford University law may be taken by those who have completed two years of college work. In the University of California, University of Chicago and Columbia University any person eligible to enter the senior year of the college department may take law. In Harvard University a student must complete all the work required for the bachelor's degree in arts before beginning law. Many students, however, in Harvard College intending to study law complete the college course in three years, as it is quite possible, and enter upon the law study the fourth year from the high school.

Theoretically the university is founded upon the college. It lies above and beyond the college. The real function of the true university is professional work in law, medicine, technology or academic studies based upon good college training. This is the ideal toward which the university should strive. Professional work in the university in law, as well as in all other fields, should be preceded by a college course. It is customary to divide the formal educational course into four periods: primary, secondary, college and university. Law properly belongs to the fourth period. It is, however, usually placed either at the beginning or sometimes near the end of the third period. Some confusion in giving law its proper place arises out of the uncertainty in determining just where the college course ends and the university course begins. There is difference of opinion as to whether the college course should not be reduced from the traditional four years to three years, and whether the instruction suitable for the fourth year after leaving the high school should not be university instruction. The practice in almost all the universities having professional schools of permitting students in the fourth year of their course to take the first year of the professional course and count such work toward the academic and professional degrees really reduces the college course to three years.

Whatever the college period be, it is said that the aim of the college course is to give a liberal education, and only liberal or general culture subjects should be included in the college curriculum; the aim of the university is to develop scholars. More correctly, the aim of the kindergarten through the university is *education*. This method of separating the educational period into divisions is arbitrary and artificial and has no real philosophical foundation. The work must proceed in some order, and such a classification may be used as a convenient designation of this order. The elementary instruction must precede the intermediate and the intermediate instruction must precede the advanced. As the secondary school lays the foundation upon which the college builds, so the college lays

the foundation upon which the university builds, which is another way of saying that the college work is more advanced than that of the high school and the university is more advanced than the work of the college.

Likewise the practice of distinguishing between liberal education and technical or professional education, and of assigning to the college the former and to the university the latter is artificial. There is no doubt a period of education during which the instruction is general and when the student pursues many subjects without reference to their bearing upon any special field of knowledge. This may be called the college period for convenience and the instruction then given be designated liberal to distinguish it from the university period when the instruction is advanced and specialized. All advanced instruction is technical and professional in the sense that it is directed along special lines with special objects in view. The lawyer, doctor and minister no longer enjoy the distinction of belonging to the learned professions. The expert geologist, chemist, electrician, journalist, the author, the architect and the teacher are professionals and represent learned professions.

It is impracticable to draw any sharp line between the college period and the university period of education, or to classify subjects as suitable for one period to the exclusion of the other, or to say when education ceases to be liberal and becomes technical or professional. Inevitably the periods will overlap and some subjects will fall equally well in both periods and the methods of instruction will apply to both equally well. This is recognized in some universities by classifying the courses of instruction into three groups: first, courses for undergraduates only; second, courses for graduates or undergraduates; third, courses for graduates only.

All of the subjects of the law curriculum, enlarged and given in the manner already indicated, except certain courses dealing entirely with procedure, properly belong in the second group of the above classification. Some subjects, however, depending on general preliminary law courses or required to be taken

in a certain order by candidates for the law degree, would be postponed until the later or graduate period. Such an arrangement would in the main render available the courses in law to all students of the university who had completed the equivalent of two, or in some institutions three, years of college work and would place the instruction in law with reference to the entire curriculum of the university where all instruction of an advanced character is placed, viz., in that period where the college and the university overlap and where it is recognized that the graduate and the undergraduate may advantageously pursue certain courses side by side in an advanced and technical or professional manner without imperiling the liberal education of the latter or the technical proficiency of the former.

The next practical step, therefore, towards the advancement of the standards of legal education is at this point: the complete recognition of the true nature of the law; its admission to the university curriculum to full and equal standing with all other university instruction; its presentation in a systematic and scientific manner in schools which are integral parts of the university; the placing of the instruction in law as near as possible to the university or graduate period of education.

This last improvement will come gradually. No reputable school can long refuse to place law study at least beyond the high school period. Its position there should be at once insisted upon. Having arrived at a point where a high school preparation can be rigidly exacted, the period at which law study can begin should be gradually advanced to one, two or three years beyond the high school.<sup>1</sup>

<sup>1</sup> President Butler, of Columbia University, in his report, November, 1903, says: "The stage of advancement measured by graduation from a secondary school is not sufficiently high to serve as the basis for the best type of professional study or to enable a university to train really well educated professional students, and the stage of advancement measured by graduation from a four year college course . . . is so high as to delay unduly the young man's entrance upon the active practice of his profession . . . and to prolong unwisely the period during which the student remains under tutelage. . . . If the choice in fixing the terms of admission to a university professional school must be made between gradu-

The other changes should be pressed for immediately. Theoretically and ideally the university ought to be founded on the college; the period of broad general study ought to precede the period of special study. While this is the ideal to be striven for, its immediate realization is not entirely essential to the accomplishment of much of the improvement which will come from the substantial recognition of the real nature of law and its place in the university curriculum. The important and very desirable result is to secure the correct attitude towards the law and its proper presentation in a learned and scientific manner. The systematic and scholarly presentation of any subject, while characteristic of the university, is a method which will apply equally throughout the entire course of education. There is no university method of instruction which is too good for the college or which should be limited to one period of education. Although it may not be immediately practical to pursue law where it logically belongs as a university or graduate subject, it is practicable to pursue it from the very outset with the true university method which is broad in scope and liberal in spirit.

ation from a four year college course . . . and no college course at all, it would in a majority of cases be the latter. . . . As a method of solving this problem, which would both protect and support the college and also put the professional schools upon a wiser, more serviceable foundation than that measured either by graduation from a four year college course or by graduation from a secondary school only, it was suggested that in addition to the four year course now existing at Columbia College a two year course should be established there, and that its satisfactory completion or equivalent scholarship tested by examination should be required for admission to the technical and professional schools of the university in the case of all candidates for degrees." Columbia University Bulletin, Nov., 1903, p. 23.

## SOME NOTIONS ABOUT LEGAL EDUCATION.

BY

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The subject of education for the Bar has been so carefully considered and discussed by the committees of this Association, the members of this Section and of the Association of American Law Schools, by the practitioner, the Bar examiner and the teachers who have made it a life work, that the writer can hardly hope to be able to add to the previous discussions much worthy of consideration. However, as no two minds view even an undisputed proposition from the same standpoint, it may be that my notions may assist in casting light upon a topic as boundless as the possible development of the human mind and as important as any earthly human interest.

The administration of justice is, in the civilized community, almost exclusively in the hands of the lawyer. No greater charge was ever committed to human hands. Justice and judgment, says Holy Writ, are the foundations of the throne of the Almighty, and every accepted definition of a state gives us the idea of "a community of persons living within defined territorial limits under a permanent organization which aims to secure the prevalence of justice." Justice is the foundation of civilization, a necessity to the continued development of mankind.

History tells us of the lost empires of the past, and has written above their records the epitaph, "They perished because of the injustice and oppression of their rulers." Reason and experience alike tell us that the civilization having the best and the most progressive system for the administration of justice between man and man will lead the vanguard of human progress, while those who neglect this great necessity must straggle and fall by the wayside.

Fondly do we hope to create a state which shall survive the shocks of time and continue to our posterity in ever-increasing measure the benefits we have ourselves enjoyed. To attain this goal, we must avoid the errors of the past, and the cardinal error of the past has been "injustice." If, then, injustice is the arch foe of humanity, they who lead the fight against it have the greater reason for being well armed.

So far as its actual effects upon humanity and the social order are concerned, it matters not that most injustice is the product of ignorance rather than intention. The effect is the same in either case. He who ignorantly gives to another water contaminated by fever germs works the same injury as he who does the same act wilfully. The laws of nature operate alike in each case. And so the injustice done in ignorance is as disastrous to the individual and the community that suffers it as the same wrong deliberately perpetrated. The laws of social order are as immutable as those of physics or of chemistry.

An experience of more than a quarter of a century at the Bar has satisfied me that most even of those infringements of right with which the lawyer must deal are the product of ignorance rather than wilfulness. And certainly in this presence it is scarcely necessary to add that the ignorant lawyer is more often than the wicked one the client's curse. Like humanity in general, there are more of us ignorant than there are wicked. Perchance also this is true of our judges.

If, then, injustice may be so largely abolished by the elimination of ignorance, how boundless is the true scope of legal education, the abolition of ignorance to the end that ultimately justice may prevail on earth as it does in heaven!

It is true that this end can be reached only by degrees. But the stern law of biology, "grow or die," is true of the world of intellect as well as that of matter. Our profession must expand to meet the expanding needs of society or society will visit upon us the punishment due to our failure.

The problem of legal education then is, How shall we best place ourselves in correspondence with our environment?

Such correspondence is the life of the profession. Its lack is death.

Modern psychology tells us that every voluntary act is the expression, the embodiment, of the will and the thought; that before we can act we must have not only desire to do, but the knowledge of how to do it. By this law, if our profession is to advance, it must both desire and know how to attain advancement, and the fundamentals of legal education must be the inculcation of

1. A desire for justice, and
2. A knowledge of how to attain it.

Manifestly, a desire for the attainment of the right must precede effort to that end, since no man will struggle for that which he does not want.

It is equally true that he who is ignorant of how to attain that which he desires will strive long and fall into many a pitfall of error ere his desires attain fruition.

## I.

One of my notions is that our present methods and standards of legal education are weak on the ethical side. Correct ethics implies a desire for the right, and as the offspring of such a desire a determination to obtain its fruition.

Such a motive and such determination necessarily lie at the foundation of the administration of justice, since lack of desire for the prevalence of right means either desire for wrong or at least an indifference which will sit tamely by and see the wrong prevail; also no desire for right can be made effective in this world without determined effort.

Lawyers are men, and a few women, and while they possess their full share of desire for the common good, they, like others, are so immersed in their own business and are so accustomed to pay intense deference to popular sentiment that they do not kick often enough or hard enough when they do kick. In this country we endure without protest an immense amount of imposition and graft. Much of such evil exists because of



ignorance, but much is suffered to exist because those who know of its existence fail to oppose and expose it.

The lawyer has a standard of ethics as high as can be asked. He who obeys it will not only command the confidence of the community, his clients and the court, but need have no fear in that day when he shall stand at the bar of a tribunal in whose verdict there will be no error and from whose sentence there is no appeal. We have codes of legal ethics in many states and able text books on the same subject, but are they used in the schools and offices? Are the students examined thereon? An examination of the courses of instruction of many law schools and the papers of many an examining board has satisfied me that little is taught on this subject and less asked by our examiners.

Correct ethical conceptions are the foundations of what we call character, and while I am aware that the best place to teach practical ethics is by the fireside in the home and that nothing is more difficult to inspire in the human heart than right desires, yet my experience in college, the law school and as a member of the board of law examiners in my own state has given me a confirmed opinion that we should lay greater stress on instruction and examination in the ethics of the profession.

We cannot afford to neglect education in character. It, equally with learning, is necessary to success and greatness at the Bar. I would not be understood, however, as believing that any merely theoretical instruction in ethics will avail to implant in the human heart that deep desire for right living which must always precede the practical application of correct ethical standards to the daily life. I do wish, however, to urge that we cannot afford to neglect instruction along that line so that the rising generation of the profession may not err from lack of knowledge.

Education is not only the inculcation of the experience of the race. It is also the acquisition of knowledge from example and the experience of the individual, and I believe it to be true that the best instruction in ethics is derived from example

and personal experience. Nevertheless, that fact affords no excuse for our neglecting to draw lessons from the history of the past.

## II.

On the intellectual side, legal education has made great strides within the past few years. At its organization, this Association found education for the Bar, compared with its present status, at a low level. There was no recognized standard. There were more students in the offices, fewer in the schools. Few states had any requirements as to preliminary education or the length of time required to be given to legal study as a prerequisite to admission. In some states anyone of full age might procure a license to call himself a lawyer simply by taking the oath of office; in almost all, Bar examinations were farcical in their scope and conduct. Today we have a fairly well recognized standard adopted by a majority of the states and by a large majority of the schools. That standard is a high school education and three years of legal study. And commissions and standing committees have met with a large measure of success in raising the standards of character and learning. All this has been accomplished under the leadership of this Association.

In alluding to the requirements of a high school education as a necessary prerequisite for admission, I am assuming that such a standard means that the student is qualified to enter the freshman class at most of our reputable colleges. While this is not always true, it is so in most of our northern states and will soon be so in those now lacking. It seems to be conceded that three years of study in a properly equipped law school should qualify the student for the commencement of practice. At all events, the profession at present seems fairly satisfied with that standard. The same satisfaction is not found with the standard of general education, and it seems probable that the next forward step will be taken in the direction of its elevation. This is as it should be. The present

standard should be regarded as the irreducible minimum. No effort should be spared to bring up to it those states whose requirements are now too low, and at the same time the leaders in legal education should be urged further to advance the standard of general education for those who in the last analysis more largely than any others make the laws and administer justice between man and man.

The history of humanity shows the race advancing through slow stages from the savage to the civilized, from the stone age to the age of steel, from brutish ignorance to what we fondly call enlightenment. As we view this advance, the only conclusion we can draw is that the race is indefinitely, if not infinitely, perfectible. Modern civilization is but the result of the aggregated efforts of this perfectible race, and no conclusion is possible save that as the race advances civilization and its multitudinous activities and interests will follow with equal step.

This development, following the law of evolution, will be from the "simple and homogeneous to the complex and heterogeneous."

If we compare the Code of Hamurabi, the earliest of the written codes within our knowledge, with the legislation of the ages since down to the mass of modern codes and decisions, the correctness of this rule of evolution in its application to law will be established. There is constantly increasing complexity. The Patriarch, judging between his children at the tent door, needed no trained interpreter of codes and decisions to apply the rules of justice to the simple facts of life as he knew it. Today not only must the judge be a lawyer, but he must have the assistance of other lawyers trained not only in law, but in all the multitudinous learning of civilization. Today the lawyer and the court may have to deal with a case of surgical malpractice, demanding a knowledge of anatomy and surgery, tomorrow the case may be one of iron-making with its chemistry, ores, fluxes, temperatures and relative proportions of materials which go to produce that common sight, pig

iron. The next day we may have to deal with questions of toxicology, the effect of poisons on animal tissues, the formation of ptomaines and other developments of the most abstruse science. A patent case may next engage attention, involving mechanics, chemistry or the history of an art or science as old as the human race.

The reason of the law as it dwells in the facts of history and is hidden in the shadows of the past. The lawyer must draw that reason forth or oftentimes fail in his endeavor to assist the court.

Mercantile law is based on the manners and customs of bygone ages. Maritime law finds its sources in the history of commerce and the development of sea power. Most of our modern statutes can be fairly interpreted only by the light of a knowledge of the history of the society which gave them their birth. But a little while and many of us may be called to argue before a new court the question of what is a reasonable rate for the carriage of freight or passengers. The special knowledge which will be required intelligently to present such a question needs no elaboration. And beyond these things the lawyer in the trial of cases must match wits with opposing counsel, witnesses hostile and friendly, with jurors and even with the court. If he knows the laws of the operation of the human mind, the better able he will be to draw the truth from the mazes in which self interest oft seeks to hide it.

As civilization develops, such problems will surely become more vast, more intricate, more far-reaching in their effects on human society. If the lawyers are not ready to meet these increasingly complex problems as they arise, they will lose their rank as leaders of human progress.

The idealist, uninformed in the facts of evolution, asserts that future civilizations will be without lawyers. Unfortunately for such predictions human nature was created with the "Ego," the great I, and so long as human selfishness continues so long will greed and the love of self seek its advantage at the expense of the neighbor, so long will some try to rob, if not

by force then by the more subtle fraud. So long as the only way to prevent such wrongs is by resistance, so long will there be cases to be tried. So long as truth itself cannot be seen by all from the same aspect, so long will there be differences of opinion as to the application of truth. So long as the human mind remains unable to comprehend all truth, so long will there be disputes about truth. And so long there will continue to exist, under some name, trained intelligences whose function it will be to search out and apply the truth between man and man.

If, then, the profession of the law is a necessity to human progress, if its aims be to lay strong and firm the foundations of that progress with the stones of justice, and if it must meet and answer the increasing demands of the increasing complexity of human development, it follows that, if it is to preserve its rank among the leaders of human progress, it must continually strive well and worthily to answer the demands upon it. This answer it cannot make by adopting a standard as sufficient for all time or even for a single generation. The evolution of humanity forbids it. The stern mandate "grow or die" commands us onward. Only the wide outlook of the liberally educated man can fully meet the situation. The desirability, nay, the necessity of continual progress, seems scarcely open for discussion. The only fairly debatable question is one of policy and power.

How far can and ought to be our next step? Shall it be ability to pass a sophomore's or a junior's class examination or shall it be a college degree? What shall be the nature of the examinations as to general and legal education, and how shall they be conducted?

In considering these questions, it should be borne in mind that the public generally has no opposition to the liberal education of lawyers; it has no desire for a lower or stationary standard of legal education. On the contrary, it feels itself better served and reposes a greater confidence in the learned. Our profession, therefore, can make and enforce its own

standard. If we are agreed, we will find little opposition. The machinery for the accomplishment of this advance, is to a large extent at least, already in existence and capable of being placed in operation as soon as the Bar of a given state desires.

An attorney is an officer of the court. The jurisdiction to admit and disbar should therefore be vested in the court whose officer he is. Such is now the law in many states. It should be made so in all. The highest court in each state should be vested with power to admit and disbar according to its own rules. That there may be a standard, the inferior courts should have no power of examination and admission nor should the legislature have jurisdiction of the subject. The general nature of the standards to be applied should be fixed by rule and the examination of candidates placed in the hands of a standing committee appointed by the court. By such an organization, the views of the Bar of the state would easily be impressed on court and committee, and the raising of standards from time to time as demanded be in the hands of those ready to respond to the reasonable demands of the public and the profession. Placing examination and recommendation in the hands of a standing committee necessarily excludes all idea of admission by diploma. This practice is objectionable because it sets up two standards, one that of the school, the other that of the committee. It matters not which has the higher standard; in either case there is inequality. Particularly should admission by diploma be abolished where the school having such a privilege is conducted for pecuniary profit. In that case there is constant temptation to advertise the privilege as a means of drawing students and an equal motive for lowering the standard of work. Also at none of the modern law schools is there that careful inquiry into the personal character of the applicant which should always precede his examination.

The history of my own state will afford a good example of how the diploma idea works. Prior to 1863 Bar examinations were in the hands of the courts, both Circuit and Supreme Courts having power to admit after examination in open court.

In 1863 the diploma of the Law School of the University of Michigan was made conclusive evidence of sufficient legal learning and character to entitle to admission. In 1881 this provision was repealed and the law school graduates required to pass the usual examinations. From 1881 to 1895 the examinations in our Supreme Court were fairly exacting. Those in the Circuit Courts more often than not were insufficient and often they were farcical. The writer has seen two hundred graduates of the University Law School asked one question apiece and admitted whether the question was correctly answered or not. In 1895 the present Board of Law Examiners was created and the diploma privilege granted to the University Law School. In 1897 a member of the faculty of a law school conducted for pecuniary profit was a member of the legislature. In that year the diploma privilege was extended to that school. Today in Michigan we have two schools whose diploma will admit anyone to the Bar without examination as to character or general or legal education. In fact, as our law says such holders "shall be admitted," it is not perceived why an attorney who has been disbarred or a person of notoriously evil life may not find entrance by passing through these schools.

I do not wish to pose as an opponent of law schools. On the contrary, I am a graduate of one, and several years of service on our State Board of Law Examiners, as well as my experience at the Bar, have fully satisfied me that the best place for the law student is at the law school. The records of our state board and my own observation have satisfied me of the superiority of the law school training over that of the office. No student who can go to the law school should dream of study in an office save as a desirable supplement to the broader training of the school. The Board of Examiners in Michigan has always been composed of careful, painstaking men wishing for the advancement of the administration of justice. Its examinations have been fully up to the standard of those held by similar commissions. But notwithstanding all this, its efforts

for the elevation of the character and ability of the new members of our Bar have not met with a commensurate success. This failure I attribute wholly to the diploma privilege. I hope this Association will in the near future set the seal of its condemnation upon the diploma as a means of admission to the Bar.

The determination of the standard of general education having been fixed by rule, my experience as an examiner leads to the conclusion that the decision of whether or not the candidate is up to standard should be left to others than the law examiners. While the examiners will in almost all cases be men of broad general culture, in most cases their school days will have long been passed and their ability to conduct examinations on subjects to which they have for years paid little or no attention will be open to serious question. Under such circumstances, it would seem advisable that the questions on general educational subjects should be prepared and marked by persons familiar with that work. And in fixing the standard of general education it ought to be remembered that it is education that is needed and wanted, not diplomas.

We should not presume to set up standards which firm resolve, persistent labor and strong intellect unfavored by the smiles of fortune may not reach. Let us not say that every applicant must have a certain certificate or a bachelor's degree, but only that he shall have the culture of which that certificate or degree is the evidence. By so doing the future Hardwicke or Erskine, Marshall, Pinckney, Wirt or Cooley will not be forbidden the honors of the Bar because of poverty.

Finally, let us so work that the labor of elevating the standards of our profession inaugurated and so successfully continued by this Association may move onward, ever onward with the progress of humanity, so that when the hand of time shall strike the hour for the assembling of the first parliament of the world and the battle flags of the nations shall be furled forever, the American representatives who then shall sit in the court that shall decide the world's disputes may by reason of their character, learning and ability be fit for their high mission.



## THE STATE BAR EXAMINER AND THE LAW SCHOOL.

BY

GEORGE W. WALL,

PRESIDENT OF THE ILLINOIS STATE BOARD OF LAW EXAMINERS.

The law school has become one of the recognized institutions of the day. Speaking generally, it may be said that the law schools are now educating the great majority of applicants for admission to the Bar. The advantages they offer greatly exceed those afforded in the law offices, and students, who can, wisely elect that mode of instruction.

No doubt a term in a law office, even a busy one, where the student is little more than an errand boy, is worth something, indeed, considerable, and in the judgment of the writer such an experience may well precede, or intervene, or follow a course in the law school, but the latter is so much more valuable as to be almost indispensable. Some men can acquire a knowledge of the law by private reading merely; they are the exceptions. The average man needs instruction—education. That implies something more than the mere learning of a few definitions or an acquaintance with a few leading cases so-called. It means a *training*; a knowledge of fundamental principles; a habit of clear and logical thinking; and such familiarity with the books that the student can readily turn to the standard authorities, comprehend their teaching, and usefully read cited cases, discriminating between them and the case in hand. In some states, the graduates of certain law schools are admitted to the Bar on motion and as a matter of course. In others, boards have been appointed to examine all applicants, and thus some friction has occurred.

The examiner is mindful that the law school has given the applicant a diploma which implies proficiency, but he must

form his own estimate based upon his own examination, which, of course, may be along lines unfamiliar to the applicant, and when he feels compelled to deny a certificate there may be surprise and disappointment, not only to the applicant, but to his law school also. However, there should be no ill-feeling; the school and the examiner should understand and respect each other and should co-operate. Each is in duty bound to maintain the highest practical standard.

The examiner should reach his conclusion wisely and fairly—not captiously or unreasonably and always remembering that in the nature of things his examination cannot be thorough and must be more or less fragmentary. On the other hand, he knows that there is more or less imperfection in the methods of the schools with no little opportunity for negligent and superficial work, especially in large classes. He should approach his task in no carping or hypercritical spirit, and yet with no fear of giving offense by his conscientious action.

From the viewpoint of one whose judicial duty required him to examine semi-annually during eighteen years those who presented themselves in an appellate district of the state and who subsequently for nearly nine years, as a member of the state board, has examined all appearing as applicants in the entire state—the whole number thus examined exceeding five thousand—a few observations will be offered as to defects noted, their probable causes and their possible corrections.

The rule of the Supreme Court under which the Illinois State Board of Examiners is operating, adopted October, 1897, requires a three years' course of legal study, under the tuition of a licensed lawyer or in a law school. Prior to that time, the rule in force required two years. During all the time applicants came from law offices and from law schools, but data are not at hand showing the proportions or the names of the schools, which were located, mainly, in the North and East.

The chief deficiency in applicants has been in respect to fundamental, elementary principles; what is the rule and *why* is it the rule? Seldom is there such proficiency therein as there should be and too often the lack is of the most pronounced character. This appears as well when the question calls for a definition or a rule as when it presents a supposed case for solution. The man is at sea all along the line, giving confused and obscure, if not absolutely erroneous, answers to most of the questions. Here, of course, the fault may be in the student or in the instructor. The student is armed with a diploma, and assuming, as we generally must, that he has average capacity and industry, the inference is that there has been deficient instruction; either not enough or not in the right way, and that the system is so loose as to permit all who have been upon the rolls the prescribed time to pass with the same marks whether fit or unfit.

In the opinion of the writer much of this poor showing comes from undue reliance upon the case method of instruction. Leading cases wisely selected may well be studied to some extent in the advanced courses, but earlier instruction should be based upon standard text books. It is not intended here to discuss details as to modes of teaching, but to insist strongly, though with due respect to those whose opinions are opposed, that there must be a solid foundation of elementary principles to be acquired from approved text books, which the student should carefully read and re-read in connection with the lecture, examination and other aid of the instructor, and that it is very difficult, if not impossible, to acquire a proper knowledge of the law in any of its branches by the *mere study of cases*. Most lawyers who come to the Bar through mere case study will be forever in search of precedents, always at a loss upon the principles involved, seldom able to take a strong, clear and accurate view of the controversy. Should they be placed on the Bench, their peculiar weakness will be the more apparent—they will decide their cases at random or, what is often worse, will unduly delay in hope of finding adjudged

cases "on all fours" with the one under advisement, and will then possibly make an erroneous ruling. Of course, there may be many shining exceptions; for as there are some who can learn law without any instruction, so there are some who can learn it without the best.

Another and most serious difficulty is that, in some schools, the students and the faculty are principally engaged in other matters, giving to this an insufficient portion of time and that under conditions not likely to produce good results. Reference is here made to the night schools which abound in some places, conducted by lawyers in full practice and by judges on the Bench and patronized by students who are employed in some calling or service on which they depend for a living, and which substantially occupies all their daylight hours. It is no wonder that under such conditions the result is often unsatisfactory. The teacher and the taught, wearied by the labor of the day, are working up-hill.

Extraordinary men may thus obtain all they need, but such men might dispense with all instruction. It is not intended to condemn the ambitious effort of a man whose means will not permit him to devote his entire time to preparation for his chosen profession, but merely to note the fact that one can hardly hope to acquire adequate legal learning by such methods. Some very capable men act as instructors in such schools, and some very worthy and deserving men attend them, but it must be apparent that this is a pursuit of knowledge under difficulties so great that in many, very many, instances success is hardly to be expected.

As a rule, graduates of law schools are not well versed in pleadings. Perhaps it is not deemed necessary to study this branch of the law seriously if one expects to practice in a code state.

The writer is of opinion this is a grave mistake. The lawyer who understands his case and knows the law applicable thereto will have no trouble with the pleadings, and conversely, if he is familiar with the common law system of pleading, will

the more readily comprehend his case and its law. In other words, to understand the science of pleading is very largely to understand the common law. If one can correctly state his cause of action or his defense in the terms of pleading as they are known at the common law, he will not likely fall into error as to the legal aspect of his case. It is doubtful whether any single book ever printed contains more substantive law, well stated, than the first volume of Chitty on Pleading.

A most important feature of the lawyer's composition is his ethical character. This may be made or marred very largely during his early years, those devoted to general and legal education. No greater service can be rendered by the law school than in this direction, and the greater his ability the more the young man will need this aid, or rather the more apparent will be his lack of the ethical quality. An able, well read lawyer, without integrity, is a menace, nay, a scourge to his community. Moreover, he brings the whole profession into disrepute, for most people gauge a calling by the ablest, albeit the most dishonorable member of it. It is a too common opinion that lawyers are unreliable, not to say corrupt and dishonest, and thus they fail of respect or following. A cheap, conceited demagogue will often carry more weight and influence on the most vital questions than the best lawyer, simply because lawyers generally are at a discount by reason of the record they make for themselves. It should be just the other way.

The lawyer may be the most influential and respected man in the community; and he will be, if to ability and learning he unites high character and unquestioned integrity. If he has only "a one-story intellect and a one-horse vocabulary," he will be a mere cipher, and so he will if wanting in real manhood whatever may be his acquirements. From the ranks of the profession must come the judges of the land; the judicial department of the national and state government. The lawmaker should be a person learned in the law.

Governors and presidents should be well seasoned and profound lawyers. The management of great interests is often committed to lawyers and would be more frequently if they were more fit for it. All this is open to the profession, and the law school should not be unmindful of its responsibility and its opportunity to mould the men who will so soon come to the front, and who may so largely shape and control the affairs of the republic.

Let the law school enforce more thoroughness with better methods of study and let it inspire higher ideals of professional excellence. Let it teach, in season and out, precept upon precept, never to be forgotten, that the great lawyer is the best and most useful type of citizen. One more suggestion: Many law schools seem anxious merely to increase the volume of their business, and they turn out graduates as a packing-house turns out bacon and tinned meats, thinking more of quantity than quality.

Too many inducements are held forth and too many young men are led to think they can make lawyers, though neither they nor their friends have any idea they could succeed at anything else. In short access to the Bar is too easy. The profession is overcrowded, the lawyer and his work are cheapened and discredited. When the profession is assailed because so many of its members are unworthy, what defense can the law schools or the boards of examiners interpose for the part they have taken in advancing to the Bar men who, by their lack of learning or character, are unfit for it? Let us have fewer and better lawyers; at least, let them be better. It is conceded that the standard has been considerably elevated, but there is room for more improvement. It is within the power of the law schools and the examiners to bring this about. Radical measures that might seem revolutionary are not advisable, but there should be a steady, persistent and judicious effort in the direction indicated.

We know very well, but do not always realize the enormous loss to clients and to the public generally from delay and

miscarriage in the administration of justice, due very often to incompetence or misconduct of lawyers, and (let it be admitted) the weakness, hesitation and inefficiency of judges. The press, ever eager to exalt itself and to assume the general direction of affairs, constantly points to these failures in judicial proceedings, but the profession as a rule seems rather complacent and indifferent in regard to a matter so vitally affecting its standing and usefulness.

If anything foregoing is too strongly put, it will, as hoped, be excused because prompted only by a desire for higher standards. Whatever is too obvious will, of course, be ignored. If, as it seems to the writer, a three years' course should insure better equipment than the majority of graduates exhibit, there should be no false delicacy in stating the fact, nor any hesitation in applying the proper remedial treatment.

PROCEEDINGS  
OF THE  
SECTION OF PATENT, TRADE-MARK AND  
COPYRIGHT LAW.

*St. Paul, Minnesota, August 29, 1906.*

The Section of Patent, Trade-Mark and Copyright Law of the American Bar Association convened in the Senate Judiciary Room, Capitol Building, St. Paul, Minnesota, August 29, 1906, at 3 P. M., the Chairman, Robert S. Taylor, of Indiana, presiding.

The Secretary, Melville Church, of the District of Columbia, being absent, J. Nota McGill, of the District of Columbia, was elected Secretary *pro tempore*.

A letter from Mr. J. J. O'Connell, of New York, was read, but as the matter to which he referred was not before the Section, no action was taken thereon.

The Chairman:

The usages of the Section contemplate that at the opening of each meeting the Chairman of the Section shall deliver an address.

On this occasion I shall omit that duty; at least I shall omit the discharge of it in any substantial way. I would have been very glad if it had been possible to prepare something worthy of the attention of the Section if I could do so, but circumstances were such that I was unable, from combined embarrassments in the way of ill health and business, to prepare any such paper. I have some thoughts in my mind which I should have been glad to embody in form and present to the Section. What I would say, if I could say it in the way I should like, would be on a subject which might be defined as the relation of invention to social and political progress, a subject which is not far from the thoughts of any of us, but it



appears to me that we might not fully realize all phases of it unless we turn our attention quite closely to it.

All government is instituted to promote the happiness of mankind. The happiness of mankind is made up of the happiness of individuals. There is no such thing as social progress or prosperity that is not made up of the progress and prosperity of individuals. The happiness of individual men and women consists in the enjoyment of the good things of life, which commence with the simple supply of the simplest wants in the way of food and clothing and home; with the supply of the intellectual wants, as by books and papers, and the social wants which comprise travel and amusement. In the very able address delivered this morning to the Association, mention was made frequently of the part which science plays in modern progress and in the changes of modern life. That was quite true and well said. This is the day of scientific progress, and great blessings have come to mankind out of it. But I think that if we reflect a moment it will be apparent that it is not after all so much science as it is the application of science by invention that benefits society. It is not the sciences in the abstract, but it is science made practical and utilized for the good of man that promotes the welfare of society.

If there were time to take up the category of the elements of human happiness and consider the extent to which invention enters into the enjoyment and prosperity of mankind today, we should be surprised, I think, to find how great it is. Of course, invention in the strict sense of the word has been the accompaniment of civilization from the very oldest and simplest beginnings. The simplest plow ever used to till the soil was an invention. The simplest boat that ever rode the waters was an invention. But when we use that word we commonly apply it to the inventions which we may say extend no farther back than about one hundred years, within which time the progress of invention has far exceeded that which was made in all the preceding centuries. In the production of food and its preparation for human consumption, it will be

found, if you think for a moment, that every mouthful we eat of anything owes something to processes or machinery resting on invention. The means by which we prepare our food and make it wholesome and palatable are almost without exception the product of invention. The old-fashioned fireplace is little used nowadays anywhere. Even the humblest homes have stoves and ranges that are usually patented, and the patents in that line are very numerous. In the matter of our clothing, none of us, I suppose, wears a garment that did not involve in its production a great many patents in the machines by which the yarn was spun, the cloth woven, the garment fashioned and so on. If we would go over the whole ground, we should find that every one of us wears every hour the product of hundreds of inventions that have, by their co-operation one with another stretching through the stages of progress of the manufacture of clothing, contributed to produce at last his comfortable, enduring dress.

In our homes the same thing is true. The furniture, the carpets, the paper on the wall, everything that makes home attractive and comfortable, all are the product of invention in one way or another, directly or indirectly. The food of our minds, the books we read, the very books in which science itself is recorded and made available for human use, all these are the products of innumerable inventions. The paper on which the books and papers are printed, the type by means of which they are printed, the ink which imparts the coloring, the machines which do the work of binding, and so on, form, before you get through with it, an immense array of inventions entering into the everyday life of the people. And so it is even with the beds we sleep on. And so it is, perhaps in a more notable sense, with the resources we have for travel and social intercourse, and all that.

I am speaking now of the improved conditions which reach all the people, the greater leisure we have, the better clothing, the more comfortable houses in which we live, the greater supply of amusements of a high order, the greater opportunities

for travel and observation and social intercourse. It is out of these things that the happiness of the individual has been increased from babyhood to the grave. It is in this increase in the happiness and prosperity and welfare of the individual man that the progress of society consists. And to my mind it is all due primarily to invention—more to invention than to any other cause I can name.

And so I think we may exalt our profession. I may say that there is no other branch of the law that has more to do with the welfare of mankind than the patent law, and what we do, therefore, is to be regarded as work done for humanity along the most important lines.

And this leads to another thought. In thinking of invention and its effect upon society, we, of course, think first of past invention, of what has been done in the past, and I think we very rarely realize to the full extent what is yet in store. I know it seems to an uninventive man, it has seemed to me for many years, that the inventive faculty must be about exhausted; that there could not be expected in the field of invention during the next hundred years anything like the progress of the last hundred. Then, again, I don't know. Every once in a while I run across some little invention along a line where it would seem as though the resources of ingenuity must have been exhausted, and yet in which there has been left something to be done so simple, and yet so effective, that it seems strange it was not done long before. In operating railroads, for instance, one of the practical problems is to find a way to hold the rails down on the ties; that is, some way to spike them down so that the spikes will hold firmly and yet, when occasion requires, may be taken out. I saw the other day an account of a new invention along that line which appeared to me as though it ought to be very effective and yet was the very culmination of simplicity. It was a railroad spike made like the ordinary railroad spike except that it had along one side of it a groove extending half or two-thirds of the way down the spike and terminating in a little shoulder

slanting downwardly and outwardly. To use it, you drive the spike in in the ordinary way, then take a little supplementary spike made to fit that groove and drive it down the groove; when the point comes to the slanting shoulder it leaves the groove and runs into the wood, turns upward and forms a hook which buries itself like a fish-hook in the body of the wood and holds the spike in place. If you want to take it out, apply enough force to straighten out the little spike and then the large one comes out easily enough. It struck me as an exceedingly good illustration of the possibility of neat, useful invention in a field that had been worked over and over and over for years. All these things in railroad construction, spikes, nutlocks, and that sort of thing, have been the subject of years of work by hundreds of men, and yet they all, so far as I know, left that little thing unthought of until the very last.

The same thing is true in regard to questions of law which we, as lawyers, have to meet. At this late day in the administration of patent law, I doubt not I speak the experience of yourselves as well as my own, we are constantly encountering questions of law which it would seem must have arisen many times and been decided long ago, but in spite of the most industrious research appear never to have arisen before. To illustrate, I have myself quite recently encountered this question: When a patentee brings a suit against a manufacturer and the manufacturer defends on the ground that the patent is invalid, or the article he produces does not infringe, and the manufacturer wins his suit, what are his rights then with regard to going on with his business and the rights of his customers who buy from him? It having been judicially decided between him and the patentee that the patent is either invalid or that his manufacture does not infringe, may he then go on and manufacture the same thing and sell it, and may those who buy hold the articles free from all claims of the patentee under his patent? It would seem to me that this condition must have arisen hundreds of times. It must be that in many cases manufacturers have defended under these

circumstances, won their cases, gone on making goods and selling without any further interference from the patentee. But I am not able to find that any such case ever came up for decision. Of course I recognize the fact that a man might make a very diligent search and miss something among the decisions just as men miss things along the line of invention as I have already mentioned.

But I am saying a great deal more than I intended to. The lesson of it all to me is this: We have before our eyes the evidence that the world has made most tremendous advances in the elements of human happiness. Invention has carried comforts into every home in the land. It contributes to health, growth, intelligence and happiness of every kind, and we who are concerned with the administration of the law are doing a work which has to do with the highest interest of society, and the work is one in regard to which we need not apprehend that there will ever be any exhaustion of the subject matter. There will be no exhaustion in the field of invention, neither will there be any exhaustion of the questions which will arise, the just and wise settlement of which will demand our attention and labor. So that we stand today, not only in the afternoon of a wonderful age and the development of a wonderful system, but we stand in the morning of a repetition of an equally wonderful day, with equally important and difficult questions to engage our powers. We have upon us, therefore, the highest responsibility that can rest upon men to make the most out of the patent system that can be made by its just and intelligent and fair administration. All this has to do with our work as attorneys; it has to do with the care and conscientiousness with which we prepare our cases and argue them. It runs into the organization of our courts, the appointment of judges and everything relating to the administration of the patent laws. We have no higher duty before us, and this is a thought appropriate to a meeting like this, than to make out of our patent system all that we can along all lines on which we are brought into contact with it.

There is a report to be presented, I think, by Mr. Steuart, and we will hear that now.

Arthur Steuart, of Maryland, then presented the report of the Special Committee on Trade-Marks.

The Chairman :

We will now listen to a paper by Mr. Otto R. Barnett, of Chicago, on the subject of the "Evolution of the Law of Unjust Trade and Unfair Competition."

Otto R. Barnett, of Illinois, then read his paper.

*(The Paper follows these Minutes.)*

The paper was discussed at considerable length by Messrs. Arthur Steuart, of Maryland, George P. Barton, of Illinois, Merritt Starr, of Illinois, and James H. Raymond, of Illinois.

On motion of Merritt Starr, the Chair appointed a committee on nominations consisting of Merritt Starr, George P. Barton and Arthur Steuart.

The committee reported the following nominations: For Chairman, Robert S. Taylor, of Indiana; for Secretary, Otto R. Barnett, of Illinois.

On motion of George P. Barton, the officers nominated were duly elected.

The Section then adjourned *sine die*.

J. NOTA MCGILL,  
*Secretary pro tempore.*

## THE EVOLUTION OF THE LAW OF UNJUST TRADE AND UNFAIR COMPETITION.

BY

OTTO RAYMOND BARNETT,

OF CHICAGO, ILLINOIS.

At the threshold of our law studies we were told by Sir William Blackstone of blessed memory that where reason ends there the law ends, and that where there is a wrong there is always a remedy. Yet, in the awakening which soon came with further knowledge, we were tempted to believe that in these days of much lawmaking it only too often seems to be true that where reason ends there the law *begins*, and that, from the standpoint of the courts, the absence of the remedy is proof conclusive that no wrong exists.

And yet there is one branch of the law which has been evolved from the common law, free from the trammels of statutory interference, which very closely approaches pure ethics.

The late Rowland Cox has been reported as saying that the essence of trade-mark law is found in the Mosaic command, "Thou shalt not steal." It is also said that upon one occasion when, true to his conception of the spirit of the law of trade-marks, he urged this view, the court replied: "The trouble, Mr. Cox, is that you are twenty years in advance of the times." Be that as it may, out of the technical common law of trade-marks, broad and elastic as it is, has so rapidly been evolved, or, should I rather say, has so rapidly been adopted, in recent years the doctrine of unjust trade and unfair competition that even the contentions of Rowland Cox would, in many cases, be less than the established law now is, though less than a decade has passed since that illustrious specialist made his last argument and filed his last brief.

The law of trade-marks under the common law has long been afforded some of the broadest, most permanent and most just rights afforded by the law. But broad and elastic as those rights are, even the law of trade-marks has been hampered by technicalities and limitations which have only too often prevented justice from being done.

In the law as to unjust trade as it prevails today, we find the courts casting aside the technical questions of the trade-mark law and broadly and effectively enforcing the command, "Thou shalt not steal." In such cases, the gist or the court's inquiry appears to be: "Is the defendant seeking by any unfair device to divert to himself trade which would otherwise fairly, justly and probably go to the complainant?" If that is the case, no technicality, no subterfuge and no indirection will avail defendant to avoid the entry of an efficient decree against him.

It will be well to note here wherein, in this paper, the subject of unjust trade and unfair competition is distinguished from the more limited subject of trade-marks. We note the definition of a trade-mark in *Newman vs. Alvord*, 51 N. Y. 189-193, as follows: "A trade-mark must be used to indicate not the quality, but the origin or ownership of the *article to which it is attached*. It may be any sign, mark, symbol, word or words which others have not an equal right to employ for the same purpose." While we find in the decision of *Dennison Mfg. Co. vs. Thomas Mfg. Co.*, 94 Fed. 651-659, the following: "Unfair competition in trade, as distinguished from infringement of trade-marks, does *not* involve the violation of any exclusive right to the use of the word, mark or symbol. The word may be purely generic or descriptive, and the mark or symbol indicative only of style, size, shape or quality, and as such open to the public, yet there may be unfair competition in trade by an improper use of such word, mark or symbol."

A material difference in procedure arises from these differences, to wit, when the adoption and use of a technical trade-mark is proven, it has been held that the complainant need



not have affirmative proof that he has built up a reputation under such trade-mark. And infringement of a trade-mark having been proven, complainant need not show fraudulent intent on the part of the defendant. In unfair competition, however, since complainant bases his right upon the use of words, characters and the like, as to which he has no exclusive right, he must plead and prove that such words, characters or symbols have acquired a peculiar significance in connection with his business, and he must plead and prove that the defendant has fraudulently used the same or like words, characters or symbols for the purposes of unfairly taking advantage of complainant's reputation, although even in such cases the deliberate and obvious simulation of complainant's device may create a sufficient presumption of fraud where no other sufficient reason for such simulation is shown.

In seeking the origin of the doctrine now under consideration, we are carried back to the genesis of trade-mark law, and we find that what we are so apt to look upon as a modern doctrine has its tap-root deep in the common law of fraud, from which it has been developed concurrently with the law of trade-marks, although the law as to trade-marks has had the more rapid development and the more general attention of the courts until comparatively recent years.

As the law of trade-marks began to take definite form, we find the first court record relating to trade-marks in that cause in the time of Elizabeth (A. D. 1590) where a suit was brought against a clothier who had fraudulently applied another's trade-mark to his own inferior cloth.<sup>1</sup> As late, however, as 1742 Lord Hardwicke held that he knew of no instance of granting an injunction to restrain one trader from using the mark of another, his lordship adding, "and I think it would be of mischievous consequence to do it."<sup>2</sup>

In view of that pronouncement, we may consider that the law of trade-marks, so far as the right to enjoin infringement

<sup>1</sup> *Southern vs. How*, Common Pleas, Popham 144.

<sup>2</sup> *Blanchard vs. Hill*, 2 Atk. 484; R. Cox, 633.

is concerned, dates no further back than the middle of the eighteenth century. During the succeeding hundred years that branch of the law gradually took definite form until about 1850 many of its broad principles had begun to be fairly settled. But even in this formative period of trade-mark law, there were occasional pronouncements on broad lines by wise jurists which foreshadowed that more liberal and most just development of the law which we are now considering.

Thus, in 1809, in *Longman vs. Winchester*,<sup>1</sup> involving the pirating of a published law calendar, Lord Eldon said: "Each party might publish his own collection . . . but the one *could not excite the public curiosity* by copying into his work from that of the other."

In 1811, the defendant in *Sedon vs. Senate*<sup>2</sup> was enjoined, among other things, from putting forth advertisements containing verses which had been used by him in the business which he had sold to plaintiff.

In the case of *Henry vs. Price*,<sup>3</sup> decided in 1831, it is not clear to what extent the case turned on the fact that the defendant used the same peculiarly shaped bottles which had been adopted by plaintiff for marketing his product, yet in *Blofeld vs. Payne*,<sup>4</sup> decided about two years later, the case was squarely decided in favor of plaintiff because defendant sold hones in special envelopes like those of plaintiff, and damages were awarded for the fraud.

Five years later in *Knott vs. Morgan*,<sup>5</sup> decided in 1836, a decision was rendered which appears to be a starting point in the law of unfair competition. In that case the London Conveyance Company painted its omnibuses and clothed its servants in a special and distinctive manner. The defendant began to run 'buses similarly painted and with servants similarly clothed. Here surely was no technical trade-mark applied to an article

<sup>1</sup> *Longman vs. Winchester*, 16 Ves. 269.

<sup>2</sup> Cited 2 V. & B. 220.

<sup>3</sup> 1 Leg. Obs. 364.

<sup>4</sup> 4 B. & Ad. 410.

<sup>5</sup> 2 Keen. 213.

of commerce and as to which the plaintiff possessed exclusive rights because of its arbitrary character and adoption, but manifestly there was most unfair competition, or, as characterized by one commentator, "An obvious attempt to trade upon the plaintiff's reputation, a constructive fraud which was made the basis of the issuance of a broad injunction."<sup>1</sup> This case is notable because of the broad equities upon which it was decided, and in view of this and subsequent cases it would seem that the law as to unjust trade and unfair competition is as old as the law of trade-marks, but unlike the law of trade-marks it went through prolonged periods of suspended animation.

Following the broad, equitable principles announced and followed in *Knott vs. Morgan*, came the decision in *Croft vs. Day*<sup>2</sup> in 1843, which is one of the first of that long line of decisions enjoining a defendant from the unfair or fraudulent use of his own name in an endeavor to trade on a competitor's established reputation. The defendant, Day, who had succeeded in associating with him a man named Martin, was enjoined as to the manner of using the name Day & Martin, not only on labels, but also on show cards, in competition with the established business of the old shoe-blackening firm of Day & Martin.

Lord Langdale there said: "You may say that no man has a right to dress himself in colors, or adopt and bear symbols to which he has no peculiar or exclusive right . . . for the purpose of inducing the public to suppose either that he is another person or that he is connected with and selling the manufacture of such other person while he is really selling his own. . . . It is perfectly manifest that two things are required for the accomplishment of a fraud such as is here contemplated. First, there must be such a general resemblance of the forms, words, symbols and accompaniments as to mislead the public; and, secondly, a sufficient distinctive indi-

<sup>1</sup> Cox's Manual, Case 57, note 2.

<sup>2</sup> 7 Beav. 84.

viduality must be preserved so as to procure for the person himself the benefit of the deception which the general resemblance is calculated to produce." Note also the following language in this same opinion: "My decision does not depend on any peculiar or exclusive right the plaintiffs have to the names of Day & Martin, but upon the fact of the defendants using those names in connection with certain circumstances and in a manner calculated to mislead the public and to enable the defendant to obtain, at the expense of Day's estate, a benefit for himself to which he is not in fair and honest dealing entitled."

Lord Langdale's likening of such unfair competition to a case of false impersonation suggests other decisions in which the courts, by way of extreme illustration, have likened the use of false labels or other misleading devices to forgery of a signature. In the one case he seeks fraudulently to profit by passing his own signature off as that of another, in the other case he seeks to profit fraudulently by creating the impression that his own goods are those of another by simulating those marks or insignia by which his competitor's goods have become identified in the public mind.

With such broad thinking and equitable pronouncements, the artificial technical limitations which grew up in the law of trade-marks were bound ultimately to give way, first by the broadening of the doctrines as to technical trade-marks and then by the growing tendency on the part of the courts to disregard the question of the existence or infringement of a technical trade-mark in the given case.

As I see it, there is but one influence which has been and must continue to be potent in preventing the ultimate merging of the law of trade-marks into the broader law of unjust trade and unfair competition, and that is what I am constrained to term "legislative meddling." So long as there are statutes which operate solely upon trade-marks as such, just so long must the distinguishing characteristics of a technical trade-mark occupy the time of courts, clients and counsel.

In following the development of the law of unjust trade and unfair competition and the law of trade-marks, which is but a more narrow branch of the law of unfair competition, one must be impressed by the constant efforts of the courts to hold the scales of justice even so as neither to permit the unfair appropriation by the individual for his own benefit of any part of the public domain nor to permit the individual to profit unjustly by the reputation of his competitor by the use of deceptive and unfair methods.

Thus, in the early decision of Lord Hardwicke previously referred to,<sup>1</sup> we see the courts indisposed to interfere by injunction with the free use by merchants of any marks they may see fit to use, leaving competitors and purchasers who might be wronged to their remedy in actions for damages. Later we see the courts recognizing the insufficiency of this remedy and the injustice of this doctrine, and then beginning cautiously to enjoin the infringement of specific trade-marks; and yet, in their care to protect the public, they announced as a broad rule that the common domain of the language cannot be appropriated for trade-mark purposes, and, therefore, descriptive words may not be appropriated as a trade-mark, because it is the right of every man to use any appropriate language to describe his goods, and, for analogous reasons, geographical names and proper names may not be drawn from the common use for any such purposes of trade. The injustice arising from the literal application of these broad rules becoming apparent, we find the courts modifying them, as where they say that a geographical name may constitute a trade-mark if the surrounding circumstances are such that it has acquired a secondary and distinctive meaning as a trade-mark, and that in like manner the use of descriptive terms and proper names and names of localities may be protected under the peculiar circumstances of each case. Yet the necessity for measuring the complainant's rights by the rules of trade-mark law, and for considering whether the complainant may be pro-

<sup>1</sup> *Blanchard vs. Hill*, *supra*.

tected under some of the exceptions evolved from that law, has held the attention of the courts to these troublesome and narrow distinctions involving endless discussion and many hair-splitting and fine-spun theories, and the courts have, therefore, disregarded only too often the broad question as to what justice required should be done under the facts of each particular case.

Like the scientist whose sight is focused upon some minute organism which he is examining with the aid of a microscope, the attention of the courts has been only too often so concentrated upon these minutiae of the trade-mark law that they lost their perspective and failed to take a broad and comprehensive view of the relations of the parties to each other and to the fundamental principles of law.

And yet we always find that there have always been able jurists and deep thinkers in all branches of the law who have from time to time enunciated the controlling principles which have come to be more and more recognized.

Thus in *Coffeen vs. Brunton*,<sup>1</sup> decided in the United States Circuit Court in 1849 by Judge McLean, we have a further development of the law of unfair competition. There the case appeared to turn mainly on the similarity between plaintiff's and defendant's hand bills, advertisements and the directions printed on their labels, although plaintiff's article was sold as the "Chinese Liniment" and the defendant's as the "Ohio Liniment." Certainly there was no infringement of a trade-mark. Nevertheless, an injunction and damages were awarded and the case is notable as containing one of the first clear pronouncements to the effect that when once the effective similarity between plaintiff's and defendant's output is established intentional fraud need not be proven, thereby marking a distinct advance over some of the earlier cases which held that a substantial copying of a trade-mark did not alone give rise to a cause of action unless a fraudulent purpose were affirmatively proven. In that case the injunction granted restrained the defendant from using labels, directions, advertisements or hand

<sup>1</sup> 4 McLean 516.

bills calculated to lead the public to suppose that his Ohio Liniment was the Chinese Liniment made by the plaintiff.

This case of *Coffeen vs. Brunton* was decided the same year that the leading trade-mark case of *Amoskeag Manufacturing Company vs. Spear*<sup>1</sup> was determined.

So we find that, even while the law of trade-marks was first assuming definite form, a case of unfair competition was disposed of by a federal court on broad, equitable grounds and in language which is suitable to many of our more recent decisions. Indeed, the federal courts have always taken a leading part in the advancement of the law as to unfair competition, and from the *Amoskeag* case to the recent decision in *Diamond Match Co. vs. Saginaw Match Co.*, 142 Fed. 727, the reports are full of instructive and wisely considered decisions by federal judges on this subject.

Not only is the *Amoskeag* case a leading case in trade-mark law, but it may well be said that it was responsible for diverting the decisions for many years along the line of inquiry as to whether complainants were claiming under technical trade-marks within the limitations laid down in that decision. For, while that decision is clear and sound as to what constitutes a trade-mark and as to the rights of the owner thereof, it is so worded as to place emphasis on the characteristics of a trade-mark and to create the impression that a plaintiff has no standing unless he claims under a mark which comes within the definitions and characteristics there pronounced.

In *Holloway vs. Holloway*,<sup>2</sup> decided in 1850, we note a further development of the doctrine as to the use of proper names. The defendant was a brother of the complainant and used his own name in connection with his trade. The plaintiff sold "*Holloway's Pills and Ointment*" at 244 Strand, London. Defendant subsequently established himself at 210 Strand in the sale of "*H. Holloway's Pills and Ointment*," but in boxes, pots, labels and packages similar to plaintiff's. *Held* that

<sup>1</sup> N. Y. Superior Ct., 2 Sandf. S. O. 599.

<sup>2</sup> 13 Beav. 209.

defendant's conduct tended to and did deceive, and that defendant must be enjoined.

A similar decision was that of *Taylor vs. Taylor*,<sup>1</sup> where defendant was enjoined from using his name on spools of thread in a manner calculated to deceive. The court there announced a rule which may well be applied today in determining most cases of unfair competition. The court said :

"In every case the court must ascertain whether the differences are made *bona fide* in order to distinguish the one article from the other, whether the resemblances and the differences are such as clearly arise from the necessity of the case, or whether, on the other hand, the differences are simply colorable and the resemblances are such as are obviously intended to deceive the purchaser of the one article into the belief of its being the manufacture of another person. . . . If the court finds, as it almost invariably does find in such cases as this, that there is no reason for the resemblance except for the purpose of misleading, it will infer that the resemblance is adopted for the purpose of misleading."

In 1857 we note another milestone in *Williams vs. Johnson*,<sup>2</sup> the Williams' "Yankee Shaving Soap" case, where we find the first definite pronouncement in a leading case to the effect that plaintiff's rights may extend even to the peculiar and characteristic form and manner of package in which his goods are put upon the market, or, in the broader language of Judge Clifford, speaking for the United States Supreme Court twenty years later in *McLean vs. Fleming*:<sup>3</sup> "It is not necessary, in order to give a right to an injunction, that a specific trade-mark should be infringed."

In the *Cross Cotton Case*<sup>4</sup> and the *Seixo Wine Case*<sup>5</sup> is foreshadowed that line of decisions which have latterly gone to great lengths to the effect that although defendant's device may make a distinctly different *visual* impression, nevertheless

<sup>1</sup> 2 Eq. Rep. 290; 23 L. J. Ch. 255; 22 L. T. 277.

<sup>2</sup> S. C. N. Y. General Term, 2 Bos. 1.

<sup>3</sup> 96 U. S. 245.

<sup>4</sup> *Cartier vs. May*, cited Lloyd on Trade-Marks, 55-77.

<sup>5</sup> *Seixo vs. Provexende*, L. R. 1 Ch. 192.



its use may be enjoined where it tends to cause defendant's product to be called by the same name as plaintiff's or to create a *mental impression* whereby the purchaser is likely to be caused to confuse defendant's goods with plaintiff's. We quote from the Seixo case: "If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular name, I think the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of that device."

In the Akron Cement Case,<sup>1</sup> decided in 1872, we find the use of a geographical term by one not manufacturing at the location named enjoined at the suit of one who had rightfully established a business in connection with such geographical term.

Clearly a case of unfair competition and one which went as far in its line as any of the more recent decisions was that of *Lee vs. Haley*, decided in 1869.<sup>2</sup> Plaintiffs were in business at 22 Pall Mall. They sold coal at a guinea a ton under the name of the "Guinea Coal Co." Defendant started in business at 46 Pall Mall, selling coal at the same price and under the name of "Pall Mall Guinea Coal Co." An injunction was granted. The court said: "I quite agree that the plaintiffs have no property in the name, but the principle upon which the cases upon this subject proceed is not that there is property in the word, but that it is a fraud on a person who has established a trade and carries it on under a given name, etc. It is a fraud on the part of the defendant to set up a business under such a designation as is calculated to lead and does lead other people to suppose that his business is the business of another person."

These decisions, however, although pointing to a development of the law with which we are now so familiar and which is constantly invoked, were outside of the general trend of

<sup>1</sup> *Newman vs. Alvord*, N. Y. Sup. Ct. 49 Barb. 588.

<sup>2</sup> 21 L. T. N. S. 546; 22 L. T. N. S. 251.

decisions at that time which were, for the most part, adhering closely to the narrow boundaries of technical trade-mark law. For instance, in 1870 the Supreme Court of Illinois, in *Candee vs. Deere*, said: "The law is well settled that no circular, price list or advertisement, no matter how frequently repeated, can constitute a trade-mark,"<sup>1</sup> the implication being that the plaintiff cannot by the use of any circular, price list or advertisement acquire any right the infringement of which can be enjoined.

*McLean vs. Fleming*,<sup>2</sup> decided in 1877 by the United States Supreme Court, marks in one way the starting point of a new period of growth and strength for the law of unfair competition, for in it we find the first clear pronouncement by that high tribunal to the effect that "it is not necessary to prove infringement of a specific trade-mark if the defendant has acted with fraudulent intention."

In *Frese vs. Bachof*,<sup>3</sup> decided the following year, we find the suggestion of the Yankee Shaving Soap case definitely adopted, for while, on the motion for preliminary injunction, the court declined to enjoin defendant from imitating the peculiar form of package for tea, on final hearing defendant was enjoined from using packages similar to those of plaintiff, to wit: long cylindrical parcels, with pink wrappers and with crimson papers of directions and yellow ones of warning tied in, and having a white label with the firm name within a circle pasted across the ends of the string, etc.<sup>4</sup> And this decision in turn outlined the law which was later applied in the *Sapolio* cases where defendant was enjoined from using a package of silver paper having a deep blue band about it, although, in one case, the defendant's article was called "Pride of the Kitchen," obviously not resembling the word "Sapolio."

<sup>1</sup> 54 Ill. 439.

<sup>2</sup> 96 U. S. 245.

<sup>3</sup> 13 Blatchford 234.

<sup>4</sup> *Frese vs. Bachof*, 13 O. G. 635.

The case of *Orr, Ewing & Co. vs. Johnston*<sup>1</sup> is of interest as following the doctrines of the *Cross Cotton* case and the *Seixo Wine* case, and as logically leading to the often criticised decisions in the *Uneeda Biscuit* cases. In this case against Johnston it appeared that so far as the plaintiff's label differed from that which was common in the trade, there was but little resemblance between the plaintiff's label and the defendant's label beyond the fact that each showed a representation of two elephants supporting a banner. The court held that the difference between the tickets or labels were such that it was not probable that English purchasers or Indian dealers would be deceived, but that in view of the fact that plaintiff's yarn had become known among the users in India as "*Bhé Hathi*" or "Two Elephant" yarn, the defendant's device was of such a character that his yarn was likely to become known as "*Bhé Hathi*" or "Two Elephant" yarn.

The language of the court in that case is worthy of consideration. I quote as follows :

"Having described the tickets, I repeat the question, should I be deceived so as to take the one package for the other, even if the two tickets were not before me, supposing me to be a purchaser of ordinary caution and ordinary intelligence, I answer, I should not," and thereupon the court at length points out numerous characteristic differences between the two tickets, and continues: "Have the defendants taken a material and substantial part of the plaintiff's ticket? For this purpose it seems to me immaterial to consider whether the ticket is justly entitled to be called a trade-mark, strictly or not. . . . I must next inquire the mode in which the plaintiff's goods have been accustomed to be sold and what people have called those goods. . . . Having arrived at the conclusion that the goods of the plaintiff which bore the trade-mark in question were known as 'The Two Elephant' or '*Bhé Hathi*' goods, it follows, in my judgment, that two elephants were a material and substantial part of plaintiff's ticket because they were that part of the ticket which communicated that name to the goods. . . . There is a strong probability that the ultimate purchasers . . . would be deceived by the

<sup>1</sup> 40 L. T. N. S. 307.

defendant's ticket. . . . It appears to me that there is a great deal of evidence to which I attach weight to show that these goods are sold largely by name, and although the first dealers no doubt look at the tickets and the brokers in Bombay probably look at the tickets, yet that the ultimate purchasers probably do not look at the tickets and at any rate are liable to be deceived by the name by which the goods are sold."

*Hennessey vs. White*<sup>1</sup> brings forward another development of this branch of the law to the effect that you may not use plaintiff's own labels or packages for plaintiff's own goods where plaintiff has two qualities of his product and the defendant fills plaintiff's bottles with the quality of brandy which plaintiff in fact only sells in casks, thereby fraudulently indicating to the public that the inferior cask brandy is in fact the superior bottled cognac.

*Sawyer vs. Horn*,<sup>2</sup> decided in 1880 by the United States Circuit Court, would seem to recognize as firmly established the doctrine that, regardless of any trade-mark, a complainant may be protected in the use of a distinctive character of package as indicated in the *Williams Shaving Soap* case and distinctly decided in the *Tea Package* case. In the *Sawyer* case the court said: "Whether the complainant has a trade-mark or not, he was the first to put up bluing for sale in the peculiarly shaped and labeled boxes adopted by him, and as his goods have become known to purchasers and are bought as the goods of complainant by reason of their peculiar shape, color and label, no person has the right to use the complainant's form of package, color or label, or any imitation thereof, in such manner as to mislead purchasers into buying of his goods for those of the complainant, whether they be better or worse in quality."

The same year the leading English case of *Thorley's Cattle Food Co. vs. Massam*<sup>3</sup> was decided, in which, in an exhaustive decision and review of authorities, the court sustained com-

<sup>1</sup> 6 W. W. & A. B. Eq. 216.

<sup>2</sup> 1 Fed. Rep. 24.

<sup>3</sup> Eng. Ct. App. 42 L. T. N. S. 851.

plainant's exclusive right to the term "Thorley's Food for Cattle" as against the defendant company which had been organized by Joseph Thorley and which was, in fact, manufacturing cattle food in accordance with the original Thorley's recipe. The court said: "The words 'Thorley's Food for Cattle' would indicate, according to my view of the case, to a purchaser this: You have always had a very good article called 'Thorley's Food for Cattle'; any article bearing that name is to you a guarantee that it comes from the same place from which that has come with which you have hitherto been well satisfied and contented. . . . I am, therefore, of opinion that in this case what the defendant company have done has been calculated to deceive, and I am bound to say, in my judgment, I have no doubt was from the first intended to deceive the persons purchasing their article into the belief that they were purchasing the article which Joseph Thorley had formerly manufactured at the works which had obtained the great reputation which Thorley's manufacture appears to have obtained from the purchasers of those condiments. I am of opinion that the order should have been granted very much in the general words in which it was asked."

It would seem, therefore, from the cases which have been reviewed and from the pronouncements of the United States Supreme Court in *McLean vs. Fleming* in 1877 and of the English Court of Appeals in the *Cattle Food Case* in 1880, that by the year 1880 the law of Unjust Trade and Unfair Competition, as distinguished from the technical law of trademarks, had become broadly established and thoroughly recognized, and as confirming this view we note the comments of the Supreme Court of New York in *Morgan Sons Co. vs. Troxell*, one of the *Sapolio* cases.<sup>1</sup>

After discussing the similarity between defendant's package and that of complainant, the court says that according to defendant's contentions "it is only necessary for the dishonest trader to avoid the use of some special word or device to which

<sup>1</sup> 89 N. Y. 292 (1880).

the technical name trade-mark has been given and to gain his piratical end by imitating everything which really conveys to the public belief in the genuineness of the article sought. It must have been this shallow, as well as this unworthy idea, which was in Troxell's mind when he declared his purpose of imitating Sapolio as closely as possible without absolutely making himself liable. The law of trade-marks has been gradually expanding so as to meet just such cases. The courts, in a long and unbroken line of decisions, have endeavored to uphold and enforce commercial morality. . . . It will not be necessary to go over these cases. They have, in fact, become too numerous for extended analysis. . . . To justify the interference by injunction of a court of equity, it is sufficient that there is a fraudulent intention of palming off the defendant's goods as those of the plaintiff's, and that such intention is being carried into execution. . . . It resolves itself into the old question which has always been the question to be determined in these cases, 'Are the defendants, not in words, but by acts and by something on the face of the articles, representing their goods as being the goods of the plaintiffs?' that is to say, 'Are they using something which is calculated to pass off their goods as the goods of the plaintiff?'"

From 1880 to the present time, although litigants have come to invoke the law of unjust trade and unfair competition more and more, it would seem that but little has been added to the fundamental principles and their application. The reports for the past twenty-five years, and especially the decisions of the federal courts, are full of cases of this character and contain many pronouncements as to the controlling principles whereby, in the language of the 'Sapolio case, the courts have sought to enforce commercial morality, and yet, for the most part, there are but few propositions to be found in these later decisions which cannot be found clearly stated in some form in decisions of recognized weight rendered prior, and many of them long prior, to 1880.

Thus we note the cases enjoining defendants from the use of the geographical terms "Waltham,"<sup>1</sup> "Elgin,"<sup>2</sup> "Pocahontas,"<sup>3</sup> "St. Louis Beer,"<sup>4</sup> "Durham Tobacco,"<sup>5</sup> "California Fruits,"<sup>6</sup> "St. Louis White Lead,"<sup>7</sup> "Minnesota Flour,"<sup>8</sup> and the like, as only a few of many like cases involving the enunciation of no new doctrine. We note the enjoining of the use of arbitrary letters and figures used by complainant to indicate quality, size, series, grade, style, etc., and going a step further, we note the use of dissimilar terms enjoined, as in the "Velvet" candy case where each piece of molasses candy is wrapped in a waxed paper wrapper having the word "Velvet" printed thereon in red ink. Defendant wrapped molasses candy in a similar manner, except that the word "McDonald" was printed thereon in red ink, but obviously the impression on the eye of the purchaser in each case was that of a waxed paper wrapper having a name thereon in red ink, the wrapper being more or less mussed so that the difference in the names was unimportant.

In the matter of proper names we note the familiar cases of "Brown's Bitters,"<sup>9</sup> "Derringer's Pistols,"<sup>10</sup> "Hostetter's Bitters,"<sup>11</sup> "Jurgensen's Watches,"<sup>12</sup> "Chickering Pianos,"<sup>13</sup> "Allegretti's Chocolates,"<sup>14</sup> and innumerable other cases of the same kind as to which the old doctrine, often restated, is admirably summarized in *Hostetter Co. vs. Martinoni*, 110 Fed. 524, as follows: "Courts demand a high order of commercial

<sup>1</sup> *Am. Waltham Watch Co. vs. U. S. Watch Co.*, 173 Mass. 85.

<sup>2</sup> *Elgin Natl. Watch Co. vs. Loveland*, 132 Fed. Rep. 41.

<sup>3</sup> *Atwater vs. Castner*, 88 Fed. Rep. 642; Fed. Rep. 457; 178 U. S. 168.

<sup>4</sup> *Anheuser-Busch Brewing Assn. vs. Piza*, 24 Fed. Rep. 149.

<sup>5</sup> *Blackwell vs. Dibrell*, 3 Hughes 151.

<sup>6</sup> *California Fruit Cannery Assn. vs. Myer*, 104 Fed. Rep. 82.

<sup>7</sup> *Southern White Lead Co. vs. Coit*, 39 Fed. Rep. 492.

<sup>8</sup> *Pillsbury-Washburn Co. vs. Eagle*, 86 Fed. Rep. 608.

<sup>9</sup> *Brown Chemical Co. vs. Stearns*, 37 Fed. Rep. 360.

<sup>10</sup> *Derringer vs. Plate*, 29 Calif. 292.

<sup>11</sup> *Hostetter Co. vs. Somers*, 84 Fed. Rep. 333.

<sup>12</sup> *Jurgensen vs. Alexander*, 24 How. Pr. 269.

<sup>13</sup> *Hildreth vs. McDonald Co.*, 164 Mass. 16.

<sup>14</sup> *Allegretti Chocolate Cream Co. vs. Keller*, 85 Fed. Rep. 643.

integrity in the use by competitors of a name under which a rival has gained a business reputation, whether that name is strictly a trade-mark or is descriptive of quality merely, and frown upon all filching attempts to obtain the reputation of another."

So, also, we find other cases enjoining the use of peculiarly shaped bottles for a given product,<sup>1</sup> enjoining the imitation of complainant's manner of mounting hooks and eyes for the market,<sup>2</sup> and we even find a course of conduct enjoined, as where defendant's clerks handed out "Pride of the Kitchen" soap to purchasers who asked for "Sapolio,"<sup>3</sup> and cases where defendant furnished bitters similar to Hostetter's Bitters and advised his customers to purchase Hostetter bottles and fill them with his bitters.<sup>4</sup> Also the Webster's Dictionary cases where defendant's, by unfair advertising, sought to give the impression that their reprint of an old edition upon which the copyright had expired was, in fact, the same as the more recent and more perfect edition.<sup>5</sup>

I repeat, however, that I find in none of these more recent cases any new principles as to the law of unfair competition which have not been clearly pronounced in adjudicated cases prior to 1880.

The courts have long since ceased to hold that a defendant may fraudulently acquire plaintiff's trade without interference from the courts if he shall have a care to use only descriptive words in perpetrating his fraud; they have repeatedly enjoined the fraudulent use of proper names, of geographical terms and of descriptive phrases as a means of promoting unfair competition; they have long since decided that a plaintiff may well have acquired rights which the courts will protect by virtue of terms, words and phrases used in catalogues, letter heads and

<sup>1</sup> *Hires Co. vs. Consumers Co.*, 100 Fed. Rep. 809; *Cook & B. Co. vs. Ross*, 73 Fed. Rep. 203.

<sup>2</sup> *DeLong H. & E. Co. vs. Francis H. & E. F. Co.*, 139 Fed. 146.

<sup>3</sup> *Morgan's Sons Co. vs. Wendover*, 42 Fed. 420, 422.

<sup>4</sup> *Hostetter Co. vs. Brueggeman-Reinert D. Co.*, 46 Fed. Rep. 188.

<sup>5</sup> *Merriam vs. Texas Siftings Co.*, 49 Fed. Rep. 944.



other advertisements, although not directly applied to the goods, and where the courts have failed to grant relief in such cases it will almost invariably appear that the plaintiff has proceeded under the claim of a technical trade-mark and under methods of procedure which could be sustained only in case a technical trade-mark had been infringed. Thus there are numerous cases in the state reports which have proceeded under state statutes as to the registration of trade-marks and the prosecution of infringements thereof where relief has been refused, which would have clearly come within the law as to unjust trade, had plaintiff proceeded to seek his remedy on that line.

The Elgin Watch Company case failed in the federal courts because jurisdiction of the federal courts depended upon the statutory registration of the trade-mark, and the courts held that the geographical term "*Elgin*" was not the subject of a technical trade-mark,<sup>1</sup> but the exactly similar case of "*Waltham*," when applied to the well-known Waltham watch, was successful simply because it proceeded under the law of unjust trade and unfair competition.<sup>2</sup> And so the word "*Elgin*" was protected when due proceedings were had under the law of unfair competition.<sup>3</sup>

These cases merely serve to emphasize my previous proposition that legislative interference in the matter of trade-marks not only serves to maintain a division line between the law of trade-marks and the law of unjust trade and unfair competition, but it is the source of endless confusion of many fruitless suits and of much expense, and all with but a minimum of value by way of useful results. If there shall be any legislation at all as to trade-marks, it should go no further than a simple provision whereby a trade-mark may be registered for what it is worth as a matter of public record without attempt-

<sup>1</sup> *Ills. Watch Case Co. vs. Elgin Natl. Watch Co.*, 179 U. S. 665.

<sup>2</sup> *American Waltham Watch Co. vs. U. S. Watch Co.*, 173 Mass. 85  
*American Waltham Watch Co. vs. Sandman*, 96 Fed. Rep. 330.

<sup>3</sup> *Elgin Natl. Watch Co. vs. Loveland*, 132 Fed. 41.

ing thereby to grant any substantive right and without authorizing the officers of the state or of the federal government to inquire about or to pass upon the trade-mark so registered in any respect. The common law is ample in its protection and in its elastic adaptability to changing conditions, and nowhere has this immensely valuable elastic quality of the common law been more apparent than in the evolution of the law of unjust trade and unfair competition.

A thoughtful review of this branch of the law must lead one to the conclusion that it is one of the most potent branches of the law in promoting commercial fairness and honesty. As stated by Judge Bradford in *Dennison Mfg. Co. vs. Thomas Mfg. Co.*, 94 Fed. 651: "The gradual but progressive judicial development of the doctrine of unfair competition in trade has shed lustre on that branch of our jurisprudence as an embodiment to a marked degree of the principles of high business morality, involving the nicest discrimination between those things which may, and those which may not, be done in the course of honorable rivalry in business. . . . Two rivals in business, competing with each other in the same line of goods, may have an equal right to use the same words, marks or symbols on similar articles produced or sold by them respectively, yet if such words, marks or symbols were used by one of them before the other and by association have come to indicate to the public that the goods to which they are applied are of the production of the former, the latter will not be permitted, with intent to mislead the public, to use such words, marks or symbols in such a manner, by trade dress or otherwise, as to deceive or be capable of deceiving the public as to the origin, manufacture or ownership of the articles to which they are applied."

I conclude, therefore, with the proposition with which I began this paper, that we have a branch of the law, untrammelled by statutory interference or limitations, which very closely approaches pure ethics in requiring honest dealing as between man and man in the law of unjust trade and unfair competition.

PROCEEDINGS  
OF THE  
SIXTH ANNUAL MEETING,  
OF THE  
ASSOCIATION OF AMERICAN LAW SCHOOLS  
HELD AT  
ST. PAUL, MINNESOTA,  
*August 28 and 29, 1906.*

OFFICERS OF THE ASSOCIATION.  
1906-1907.

WILLIAM P. ROGERS, *President.*  
Cincinnati, Ohio.

WILLIAM R. VANCE, *Secretary-Treasurer.*  
George Washington University, Washington, District of Columbia.

*Executive Committee.*

THE PRESIDENT, *ex-officio.*

THE SECRETARY-TREASURER, *ex-officio.*

HENRY WADE ROGERS,  
New Haven, Connecticut.

JOHN H. WIGMORE,  
Chicago, Illinois.

JAMES B. BROOKS,  
Syracuse, New York.

ARTICLES OF ASSOCIATION.

*Adopted at Saratoga Springs, New York, August 28, 1900.*

The undersigned law schools in the United States, represented by delegates duly appointed by their respective faculties, do hereby form an association to be called the Association of

American Law Schools, and establish the following as its Articles of Association :

*First.* The object of the Association is the improvement of legal education in America, especially in the law schools.

*Second.* The Association shall meet annually at the time and place at which the American Bar Association meets. The Executive Committee may call special meetings at such time and place as the committee may select ; thirty days' notice of such meeting shall be given by the Secretary to all members of the Association, and the purpose of the meeting shall be stated in the notice.

*Third.* The law schools having delegates at this meeting and signing these articles before July 1, 1901, shall be members of the Association, provided such schools shall comply with article sixth.

*Fourth.* Each member of the Association may send to the meetings delegates not exceeding four from each law school.

*Fifth.* At all meetings of the Association the voting shall be by delegates, unless some delegate requests that any vote shall be taken by schools, in which case it shall be taken by schools, each school having one vote.

*Sixth.* Law schools may be elected to membership at any meeting by vote of the Association, but no law school shall be so elected unless it complies with the following requirements :

1. It shall require of candidates for its degree the completion of a high school course of study or its equivalent. The equivalent may be determined by the law school faculty upon certificates issued under public authority, or by the authorities of an institution of advanced learning. In the absence of these the applicant shall be required to pass an examination in studies equivalent to those required of high school graduates ; provided that this requirement shall not take effect until September, 1901.

2. The course of study leading to its degree shall cover at least two years of thirty weeks per year, with an average of at least ten hours required class room work each week for each

student; provided that after the year 1905 members of this Association shall require a three years course.

3. The conferring of its degree shall be conditioned upon the attainment of a grade of scholarship ascertained by examination.

4. It shall own, or have convenient access to during all regular library hours, a library containing the reports of the state in which the school is located and of the United States Supreme Court.

*Seventh.* Any school which shall fail to maintain the requirements provided for in article sixth, or such standard as may hereafter be adopted by resolution of the Association, shall be excluded from the Association by a vote at the general meeting, but may be reinstated at a subsequent meeting on proof that it is then *bona fide* fulfilling such requirements.

*Eighth.* The officers of this Association shall be a President and a Secretary-Treasurer, who shall be chosen from among the delegates at each annual meeting, and each of whom shall hold office until his successor is elected.

*Ninth.* At each annual meeting there shall be chosen from among the delegates three persons to be members of the Executive Committee, who, with the President and Secretary shall form such committee. The Secretary of the Association shall be secretary of the committee.

*Tenth.* The Executive Committee shall have charge of the affairs of the Association and is especially entrusted with seeing that the requirements of article sixth and seventh are complied with. All complaints shall be addressed to the Executive Committee, and shall be filed at least ninety days before the annual meeting of the Association. The committee shall investigate all complaints and report its findings, with such recommendations as it shall think proper to the Association for its action, and shall make a report at the annual meeting. This provision shall not, however, prevent any matter being taken up and passed upon by the Association; except that no law school shall be excluded from the Association under the seventh article unless the Executive Committee

has given it thirty days' notice that it has in the opinion of that committee failed to comply with the provisions of the sixth or seventh articles.

*Eleventh.* Applications for membership shall be addressed to the Secretary accompanied by evidence that the school applying fulfills the requirements of articles sixth and seventh. The Executive Committee shall examine the application, and report to the Association whether the applicant has fulfilled the requirements. Applications for membership shall be made at least ninety days before the meeting of the Association.

*Twelfth.* The Executive Committee may conduct its business by correspondence.

*Thirteenth.* The officers and other members of the Executive Committee may be re-elected, but no school shall be represented on the Executive Committee for more than three years in succession, except that the Secretary-Treasurer may be re-elected indefinitely.

*Fourteenth.* The annual assessment of each school shall be ten dollars, payable in advance, and any school which shall have failed to pay its assessment during the year shall be dropped from the Association, but may be reinstated by vote of the Association upon payment of arrears.

*Fifteenth.* These articles may be changed at any annual meeting; the vote on such change shall be by schools, and no change shall be adopted unless it is voted for by two-thirds of the schools represented, nor unless it is voted for by at least one-third of all the members of the Association; provided that no motion for an amendment shall be considered unless a copy of such proposed amendment be filed with the Secretary at least ninety days before the meeting and a copy thereof sent forthwith by the Secretary to each member.

## PROCEEDINGS.

*St. Paul, Minnesota, Tuesday,  
August 28, 1906, 8 P. M.*

The sixth annual meeting of the Association of American Law Schools, convened in the Capitol building, St. Paul, Minnesota, Tuesday evening, August 28, 1906, at 8 o'clock. President Henry Wade Rogers, of Yale University Law School, in the Chair; W. P. Rogers, of Cincinnati Law School, Secretary.

The roll call disclosed the following members in attendance :

Chicago Kent College of Law : Guy Guernsey, Charles H. Cutting, W. H. Burke.

Cincinnati Law School of the University of Cincinnati : W. P. Rogers, F. B. James.

College of the Law of the University of Nebraska : Roscoe Pound, G. B. Ayers, G. B. Costigan, Jr.

Columbia University, School of Law : C. T. Terry.

Cornell University, College of Law : E. W. Huffcut.

Illinois College of Law : H. N. Ogden, George W. Warvelle.

Indiana University, School of Law : Charles M. Hepburn.

Iowa College of Law, of Des Moines : C. C. Cole.

Georgetown University, School of Law : Seth Shepard.

Harvard University, School of Law : James Barr Ames, Samuel Williston.

Law School of the University of Chicago : Floyd R. Mechem.

Northwestern University, Law School : John H. Wigmore, F. C. Woodward, F. B. Crosley.

St. Louis Law School : William W. Keysor, William S. Curtis.

St. Paul College of Law : Clarence W. Halbert.

Syracuse University, College of Law : James B. Brooks.

University of Colorado, School of Law : William H. Peace.

University of Illinois, College of Law : Oliver A. Harker.

University of Iowa, College of Law : James S. Carley, E. A. Wilcox, F. M. Byrne.

University of Kansas, School of Law : James B. Green.

University of Maine, School of Law : W. E. Walz.

University of Michigan, Department of Law : J. H. Brewster, H. M. Bates.

University of Minnesota, College of Law : W. S. Pattee.

University of Pennsylvania, Department of Law : W. D. Lewis, W. E. Mikell.

University of Wisconsin, College of Law : E. A. Gilmore, H. S. Richards, H. C. Harriott.

Washburn College, School of Law : Ernest B. Conant.

Yale University, Law School : Henry Wade Rogers.

Law School of George Washington University : W. R. Vance, Robert M. Hughes.

The President then delivered the annual address.

*(The address follows these Minutes.)*

The President : We will now listen to a paper by Professor Floyd R. Mechem, of the University of Chicago Law School.

*(The paper follows these Minutes.)*

The President : These papers are now open for discussion.

W. S. Pattee, of Minnesota : Mr. President, I desire to make a brief statement. Owing to the fact that this room is to be occupied tomorrow night for a reception, it is proposed that the Association occupy the Senate Judiciary room, just across the hall. Therefore, I would suggest that when we adjourn tonight it be to meet in the Senate Judiciary room, tomorrow evening.

I would also state that the President of the Minnesota Bar Association has appointed a committee, consisting of C. W.



Halbert, of the College of the Law, of St. Paul, Prof. Paige, and myself, of the University Law School, to render any assistance we can to the members of this Association during the sessions. Consequently we shall be very glad to do anything we can to aid you in the performance of your duties while here.

Will you allow me also to say that it would be very gratifying to us at the University for as many of you as can to make the trip to the University campus, and especially to the law school, so that you may witness the conditions under which we are doing our work. I think it will assist us very much, as we get acquainted with one another, to know the conditions under which we are performing our respective labors.

Clarence H. Miller, of Texas : I understood you to say, Mr. President, that the Law School of the University of Texas was a member of this Association.

The President : Yes, sir.

Clarence H. Miller : I represent that school here, and I desire to say that I am inclined to agree with the President's views as to the cause of higher entrance requirements for admission to the Bar not obtaining in the Southern states. One trouble in Texas was that almost anyone could be admitted under the former methods of oral examinations. These examinations were held in the trial courts. The judges appointed committees of two or three lawyers to give the oral examinations, which were frequently of a most perfunctory character. That course resulted in a good many men getting into the profession who were not qualified. These men, however, having gotten in, and some of them having succeeded and become good lawyers, they naturally, to some extent, measured the fitness of others for entrance by the standard they themselves had been required to attain.

The University of Texas, which is the only law school in the state, is a young institution. It has not had, until comparatively recent years, very much influence in the profession ; but now it is beginning to have an influence and we are seeing

the effect of it. The old oral examination for entrance to the Bar has been supplanted recently by a method of written examinations. The examiners now impose a pretty severe test. This, I think, shows a decided step forward.

Further, the University of Texas will in 1909 require, for the entrance of a student into its law department, at least one year's work in the academic department; that is, a man must complete, in addition to his high school education, as much as one year's work in some university equal in standing to the state institution.

I would not want the gentlemen here from different parts of the country to think that the remarks which the President quoted as having been made by some members of the Texas Bar indicated the real opinions of the lawyers of Texas as a whole. One trouble with the Texas lawyer, as with other thoughtful men, is in not knowing just what kind of literary qualifications should be required of the candidate for admission to the Bar. I have never, myself, come to any satisfactory conclusion as what is the best preliminary training for the prospective lawyer.

The stand for better education taken by the law school and the better educated members of the profession in Texas, during the last three or four years, clearly indicates that the conditions in our state are very rapidly changing.

C. C. Cole, of Iowa: One purpose of this organization at its inception was, as I conclude, to elevate the law schools of the country and their work. The schools which united in the formation of this Association were the schools that were at that time doing the most thorough work that was being done anywhere. The idea was to get the other schools that were not doing such work to undertake for themselves to do it. It was not simply to improve ourselves and advance our own conditions, but it was to influence the whole body of schools, of which our organization has a little more than one-half, I believe, of the aggregate number of schools in the country. I think no one at all conversant with the experience of the

schools that ever had the longer course and the higher culture and required the largest measure of preliminary requirements would want to decry the desirability of having the standard up to the highest—if you please, two years' college work proper beyond the high school, or, as is required by Harvard, the full course requisite for the degree of A. B. But we want to accomplish the greatest measure of good. How can we do that? Will it be by our elevating the standard and getting it above what we have heretofore required? Or will it be by moving gradually upward and inviting and leading forward the other schools?

The President in his address expresses regret that we have lost the membership of Judge Ingersoll's school in Tennessee. We have been patient with Judge Ingersoll, and I think he has been a co-worker with us to get his school and those associated with him up to our standard. My idea is that we ought to maintain all the progress we have made, and we ought to declare our purpose for further advancement; but not in such a way as to cut off from us those who say that our standards are already too high. That is the thought that presents itself to my mind in a consideration of this subject. We cannot afford to retrograde; we cannot afford to let down our standards; we must constantly advance; but let us advance in moderation and in a spirit of kindness and helpfulness to other schools, and that will eventually bring them in with us.

The President's resumé of the Southern schools was a matter of much interest to me. I was very much surprised to learn of the laxity manifested in some of the schools of the South. I am willing to concede that if the outside schools will endeavor to attain a higher measure of requirement we will help to bring them up to our standards. I might refer to my own state, which has a statute requiring much less from the law student than do the law schools of the state, and we are at a disadvantage, more or less, from it. At the recent meeting of the State Bar Association, I was a member of the committee which reported on the desirability of recommending to the legislature

to advance the standards to what the law schools were maintaining. We have a state university under the control of the legislature. The legislature has prescribed the qualifications of students at the time of their application for admission to the Bar; not at the time of their commencement of the study of law; but the applicant shall have a measure of attainment substantially equivalent to a three years' course in a high school. The law schools require that at the commencement of his study he shall have that attainment; so that heretofore the law schools in that state have required the full four years' course.

I mention this for the purpose of showing that they are struggling even in Iowa to get the legislature of the state abreast of where this Association is now; and are doing it with some considerable difficulty, though we are full of hope that we shall be able to accomplish it.

The substance of what I want to say is, let us advance certainly and surely, but not too rapidly. And let us assure our brethren in the Southern schools, and there are some in the North, too, of our spirit of helpfulness, and I think in that way we shall accomplish much more than we would by making a broader gulf between them and us. I would, myself, have been quite favorable to the idea of giving the Tennessee school another year or so for it to come up to the three years' standard.

I think the remarks made by the gentleman from Texas tonight show the determination of the South to advance in this regard. Perhaps we may have stimulated them by our course. I do want to extend to these brethren the thought that we are fellow-workers in the same field with them, and that we want to accomplish the best for all of us, but that nevertheless we are ourselves determined to go on. That is the spirit I think we ought to extend to these schools. It is true that there is a difference between New England and Iowa and Minnesota, and some others of our western states. The New England schools may well fix a standard without prejudicing the attendance from the fields from which they naturally draw

their pupils, while that same standard would shut the door to many pupils in Iowa and greatly diminish our attendance. That is to say, a very much larger percentage of young men of New England are college graduates than you find in Iowa, Illinois or Minnesota. Here we cannot fix the same standards that may be fixed in New England.

Another thought that I have in this connection is that what our profession wants is elevation in the lines of real integrity, and the address of Professor Mechem this evening is something along that line, of elevating the ethical phase of our profession. My observation for forty-one years as professor of law and as teacher, and noticing the graduates, has been that the farmers of the country and the mechanics constitute the stratum of society from which we derive students with the most integrity, and what our profession needs is just that integrity. I recall the class of 1874 that was graduated from my school. We met twenty-five years afterwards in 1899 for a celebration, and we found that in that class there was one United States senator, one foreign minister, one governor, two chief justices in different states, three members of Congress, three judges of supreme courts of different states, and several were state senators or had been in the legislatures of their respective states. That was a very remarkable class. There are other classes that have approached it, but I believe that class had more men in it who had distinguished themselves than any other class in Iowa. Now, that was a class without any admission requirements, a two years' class, and it was in the early history of the two years' course in Iowa.

We are going on and we are getting these men in and we want them in, from this stratum of society of which I speak. "Very well," you say, "get them in." But, my brothers, take a farmer with two sons. He will say, "I cannot send my sons to school four years at the high school, and two years at college, and then three years at the law school. I cannot afford it. It will cost me several hundred dollars for each one each year, and if I recognize equality as equity, if I cannot.

give the same education to both, I will not give it to one." So you see, you shut the gate against many who would otherwise come into the profession.

I make these suggestions to call your attention to the fact that there is something else to be required of these who enter the profession than simply the measure of culture or period of time spent on books. I would not want to say it abroad, but I have seen some men who had much vigor of thought, and who expressed themselves in a manner that I would term butt end first. Sometimes it happens that culture will refine away that force with which nature has endowed a man. I mention this to add force to my suggestion that it is not the measure of instruction in science or art, but it is the desire of the profession to maintain the ethical standard, and we can maintain it if we hold ourselves on such a plane as that we may draw to us all these schools in the South which have been referred to.

I am thoroughly in accord with the raising of the attainments of students prior to their entering on the study of law. The Iowa statute only requires that young men when they come to be examined for admission to the Bar shall have this measure of information; the three years' course in the law will give them much of this. But the rule of the law schools is that the young men must have it when they enter the schools. I am thoroughly in accord, therefore, with what the President suggested as to helping these law schools up. And how shall we do it?

I am thoroughly in accord with the doctrine of the last speaker in reference to ethics. But how shall we accomplish it? Let us hold ourselves so that we shall have a measure of the attainment which will be acquired by everyone; many will be very far above it, anyhow; and thereby we shall help along our fellow-workers and get all together so that throughout the whole country we shall have a fair measure of the attainments required. Not that measure which New England can now sustain, for New England could take the whole of the college course, very likely; but in the West some of the states could not.

Let us, therefore, work in this spirit of helpfulness and progress, and having ourselves properly guarded, protect ourselves so that we shall not enlarge this gulf between us and sever them from us and leave them behind, but bring them along with us.

W. R. Vance, of the District of Columbia: May I add a brief statement? I wish to call your attention to the fact that at a meeting in February the law faculty of the George Washington University decided that the best interests of the young men who came to study at the institution would be conserved by requiring two years' college work as an entrance requirement; and this resolution was adopted by the board of trustees at its meeting in February, to the effect that at the beginning of the session of 1909 no student would be received unless he could show that he had received two years' work in a college. However, there is this difference from the standard at Yale, that we shall admit as special students those who have had a high school education, and they will be graduated, provided their average standing throughout the three years is twenty per cent. above passing grade.

William Draper Lewis, of Pennsylvania: It may be of interest for me to state what is probably known to many of you, on the subject of whether it would be a help to those schools to postpone the action which was taken excluding two year schools; that our action has been regarded as a help to those schools, because they can go to their trustees and say, "We are in a position really of disgrace in being excluded from the Association of American Law Schools." The helping hand that Judge Cole has spoken of is really being held out to those schools by our excluding them, as I say. And then I think the best schools of the South will be assisted in adopting the three years' course. I believe that excluding them from membership in our Association until they have adopted our standard will serve to bring them in all the quicker.

The President: On behalf the Association, I desire to express to the dean of the Minnesota Law School our appre-

ciation of the action taken in the appointment of committees to entertain us while here.

If there is no further discussion, a motion to adjourn is in order.

On motion, the Association adjourned to meet Wednesday evening, at 8 o'clock, in the Senate Judiciary room.

## SECOND SESSION.

*Wednesday, August 29, 1906, 8 P. M.*

The President: The first business in order this evening is the appointment of two special committees; one on the nomination of officers for the next year, and the other a committee to audit the Treasurer's accounts.

On motion, the Chair was empowered to appoint these committees.

The President: The Chair would appoint as nominating committee, Messrs. Huffcut, Curtis, Walz, Brooks and Hughes.

As the committee to audit the Treasurer's accounts, Messrs. Wigmore, Pease and Costigan.

We will now listen to the reading of the Treasurer's report.

William P. Rogers, of Cincinnati Law School, Ohio, Secretary-Treasurer of the Association:

As Treasurer of the Association of American Law Schools, I desire to submit the following report:

I am chargeable with the amount on hand at my last report:

August 22, 1905 . . . . .	\$461 18
Interest on deposits . . . . .	14 59
Membership fees collected . . . . .	450 00
Total . . . . .	<hr/> \$925 77



I am entitled to credit for the following items paid out :

Stamps and expressage . . . . .	\$10 00
Dando Printing Co. . . . .	52 50
James Barclay, printing . . . . .	3 00
Wagner Bros., binding . . . . .	17 50
Mary Piatt, stenography and typewriting . . . . .	25 00
H. S. Richards, expense Executive Committee meeting . . . . .	62 50
William E. Mikell, expense Executive Committee meeting, . . . . .	33 15
James B. Brooks, expense Executive Committee meeting . . . . .	36 50
Henry Wade Rogers, expense Executive Committee meeting, . . . . .	38 50
William P. Rogers, expense Executive Committee meeting, . . . . .	44 00
James Barclay, printing . . . . .	10 25
Eugene A. Gilmore, expense in examining schools . . . . .	54 70
John Hinkley, expressage . . . . .	3 04

Total, credits . . . . . \$390 64

Balance on hand . . . . . 535 13

\$925 77 \$925 77

Vouchers are filed herewith.

Respectfully submitted,

W. P. ROGERS,  
*Treasurer.*

On motion, the report of the Treasurer was received and was referred to the Auditing Committee.

The President : Next in order is the report of the Executive Committee.

The Secretary read the report of the Executive Committee as follows :

The Executive Committee presents the following report of its proceedings since September 27, 1905 :

On May 13, 1906, the committee met in Richmond, Virginia, Messrs. Henry Wade Rogers, Harry S. Richards, William E. Mikell, James B. Brooks and William P. Rogers being present.

The application for membership to the Association by the law department of the University of Texas was presented to the committee. This application was approved and the committee recommends that the school be admitted to membership.

There was also an application for membership by the College of Law of the University of South Dakota. The committee recommends that this application be continued for one year.

The Baltimore Law School, through its dean, tendered its resignation from the Association.

After full consideration of the question of further extending the time to members of the Association having only a two years' course, in which to change to a three years' course, the committee reports that it is deemed wise, in the interest both of the Association and the schools, that no change be made in the existing regulation; and it recommends that no action be taken in this matter.

There is a supplementary report which I will make.

The President: Before the supplementary report is made, is it the pleasure of the meeting that these various recommendations be considered as a whole or *seriatim*?

William W. Keysor, of Missouri: I move that the recommendations of the report be adopted as a whole.

The motion was seconded and carried.

The President: Now we will receive the supplementary report.

The Secretary: I am requested to present the following resolution which was adopted by the Executive Committee:

*Resolved*, That it is the sense of the Executive Committee that the interests of this Association would be promoted by holding its sessions during the Christmas recess, and it therefore files with the Secretary notice of a proposed amendment of the second article of the Articles of Association, so that the same shall read as follows:

"The Association shall meet annually during the Christmas recess, at such time and place as the Executive Committee may in its discretion determine."

The President: Of course no action can be taken upon this resolution at this time because it simply gives notice that it is proposed to make this amendment.

The Secretary: The Executive Committee recommends the adoption of the following resolution:

*Resolved*, That copies of all addresses in the proceedings of this Association be printed and sent to all the law schools in the United States, the Boards of Law Examiners in the various states and to the Chairman of the Committees on Legal Education in all the states.

The President: If any explanation is needed of this resolution, it is this: it was thought that considerable lack of information exists as to the subjects with which we in this Association deal, and in certain sections of the country it was deemed advisable that those interested in legal education should be made familiar with what is done in this Association and what the objects of it are.

On motion, duly seconded, the resolution was adopted.

The Secretary: The Executive Committee recommends that section 4 of article 6, pertaining to law school libraries, shall for the present remain unchanged.

On motion, duly seconded, the recommendation of the Executive Committee was approved.

The Secretary: Before proceeding to read the next resolution I ought to call the attention of the Association to the fact that letters of resignation have been received from the Buffalo Law School and from the Illinois College of Law.

On motion, duly seconded, the resignations were accepted.

The President: No letter of resignation has been received from the law school of the University of Tennessee, which, under the rules of the Association, is now ineligible to remain a member of this Association. Is it your pleasure that a resolution be passed dropping all schools now members of the Association which do not comply with the terms of the Articles of Association?

The Secretary: I have been requested to present this resolution bearing upon that subject:

*Resolved*, That all law schools members of this Association which maintain less than a three years' course in law shall be and they are hereby dropped from the Association.

William S. Curtis, of Missouri: It seems to me that rather than take positive action now, we had better give power to our officers to communicate with this school and obtain a careful ascertainment of the fact. I understood that the course had been lengthened at the University of Tennessee Law School.

The President: The course has not been lengthened. I have had several letters from Dean Ingersoll during the summer, and he states that they may be able at some subsequent time to lengthen the course, but that nothing has yet been done on the subject.

E. W. Huffcut, of New York: I move, in order to get this properly before the house, that the Association adopt the resolution just read by the Secretary.

The motion was seconded.

J. H. Wigmore, of Illinois: Under the 7th article of our Constitution, a great many of us feel that it is not within the spirit of that article to expel schools by a blanket vote in this way, the schools not being specifically named and known to us at the time we vote.

E. W. Huffcut: It will be remembered that when our articles were adopted and the requirements for applicants for membership fixed, it was agreed that there should be a three years' course of study on and after September, 1901. Then, in another section, it was provided that all the schools should have a three years' course, but that this requirement should not take effect until 1905. Now, it seems that all this resolution contemplates, that in this year 1906 it should be ascertained whether schools that have been *bona fide* members up to this time because they had a two years' course have ceased to be such members for the reason that they have failed to establish a three years' course. They are not expelled from the Association; there is no reflection upon them by this action, except that they have failed to comply with the requirements of article 6, sub-division 2, which provides that "after the year 1905 members of this Association shall require a three years' course."

The resolution was adopted.

The Secretary: In pursuance of the resolution passed last year authorizing the Executive Committee to examine schools belonging to this Association to ascertain whether they were

complying with article 6, I would state that the committee, through its agent, examined a number of the schools and found that certain of them were not complying with section 1 of article 6. Therefore your committee reports that it finds that the Chicago Kent College of Law has failed to maintain the requirements provided for in said article; that it has received and graduated students who have not had a high school preliminary education or the equivalent thereof, and the Executive Committee recommends that the said Chicago Kent College of Law be dropped from membership in the Association.

The President: I understand that there are representatives of that school present this evening and that they desire to be heard upon this recommendation. We should be very glad to hear them at this time.

Guy Guernsey, of Illinois: I do not wish to detain you long, gentlemen. I have not heard any specific case in which our school has been charged with the graduating of anybody who had not the requisite education. Our school is a night school. It is about eighteen years old and it has always been a night school. There are other schools in Chicago, of course. Until this evening the Illinois College of Law night school has been a member of the Association. The section which we are said to have violated reads as follows:

(Reading article 1, section 6.)

It has just been stated that this section was subsequently amended. At the meeting of the Association held at Hot Springs, Virginia, in 1903, there was considerable discussion about this rule and at that time the following resolution was adopted:

(Reading the resolution adopted at the Hot Springs meeting.)

Now, right here I want to say that nearly every catalogue of a law school belonging to this Association has a provision in it for special students. I have several such catalogues with me this evening, and, except for the fact that your time is limited tonight, I should like to read from some of them.

The Chicago Kent Law School does not graduate a student who has not received a high school education or its equivalent, and if an investigation has been made there, I, as secretary, am not aware of it, and I can only say that there has been no such case to my knowledge, nor will there be.

The next resolution that we have on this same line was passed last year, and reads that every member of this Association shall require from all candidates for its degree, at the time of their admission to the school, the condition of a four years' high school course or such a course of preparation as would be accepted for admission to the State University or to the principal college in the state where the law school is located; provided this requirement shall not take effect until 1907.

We do not comply with that requirement now, nor need we, because we have another year. We shall comply with that requirement, however, if we are permitted to remain in the Association. I do not believe this Association will be benefited if we are expelled for doing an act which I state we have not done, and which I am ready to show by our records that we have not done.

I therefore trust that the Association will at least suspend action until an investigation of the right kind can be made to determine whether or not we have violated this rule.

The President: I ought to say that after the action taken by this Association instructing the Executive Committee to investigate certain schools, an examination was made by an agent appointed by the Executive Committee. The gentleman who has just spoken has only recently become the secretary of this school. Whether he was secretary at the time our examination was made or not I do not know. The agent who made that examination was a law school teacher connected with a university law school in another state. He made his report to the Executive Committee, and that report was considered by us at Richmond, and after going over his report in detail, not only in reference to this school, but in reference to

other schools, the committee voted to notify the representatives of this school (whose standing had been challenged) that a report adverse to the school had been made and that before any recommendation was made to the Association the Executive Committee would be glad to hear anything the school had to say in explanation. In accordance with that, the representatives of the Chicago Kent College of Law appeared before the committee yesterday and again today. We have been very careful in our investigation, and we hope we have not been unfair; we have tried not to be, but we felt compelled, after listening to what the representatives of this school said to us, to make the recommendation we presented. Of course if the Association feels that the Executive Committee has not investigated this matter as fully as we should have done, the matter may be referred back to the Executive Committee of next year; I am simply telling you that we have done the best we could to investigate this school and have felt impelled to come to the conclusion which we have reached, namely, that the school has failed to comply with the Articles of Association. In stating this I wish to say that the faculty of that school is well known to me personally. The faculty contains men of character and standing in the profession and in the city of Chicago. A number of them are judges in the courts, men of high personal character and men of ability.

Seth Shepard, of the District of Columbia: I, for one, am not willing to vote one way or the other upon a question about which I know nothing. If the standing of a member of this Association is impeached, there ought to be proof of it made. Now, if the Executive Committee have taken testimony and the testimony is reported to us in such form that we can consider it and make up our judgment upon it, I should consider that ample. But we have simply the report of the Executive Committee on the one hand, and on the other hand we have the plea "not guilty." We have every confidence in the integrity of our Executive Committee, of course. We feel sure that they made a recommendation that was supported by

evidence. Yet how can we, as members of the Association, vote to expel a member simply upon the report of the Executive Committee? It goes without saying that it is a stigma cast upon this institution. As has been said by the Chairman, some of the members of the faculty of this school are reputable gentlemen, and if this school is stricken from the roll of membership in this Association for a violation of the rules, the violation must have been deliberate, and therefore fraudulent.

Now, I for one cannot vote to expel anyone, even if I had personal knowledge, except upon the regular presentation of the case. Who is the witness? What are the facts? What is the denial? That seems to me, as a lawyer, the only course that we can take.

C. T. Terry, of New York: Before the last speaker addressed us and before the President had made his very clear and lucid statement of the basis of the finding of the Executive Committee, I was on the point of taking something like the same position as the last speaker. It seems to me, however loath of course we all are to take drastic action in reference to any law school, that we must conform to the constitution of the Association that was prepared deliberately and after great thought; we must conform to it if we are to maintain our character.

Now, I cannot agree with the last speaker that this Association should call upon the Executive Committee to present the evidence upon which it acted. The duties of the Executive Committee are peculiar to that committee. If this Association attempted to do in executive session the detail work which it is the duty of the Executive Committee to perform, the cart would be put before the horse in the matter of the disposition of business. We must assume from the statement of the President not only that the Executive Committee acted upon carefully ascertained evidence, but that it acted upon information obtained elsewhere than from its agent, and that, not content with that, it, as it were, asked the law school in question to



show cause why such a recommendation as this should not be made.

Now, it does not seem to me further, and again somewhat in disagreement with the last speaker, that it is necessarily any smirch upon the character of the law school in question, and less still, to use the words of the previous speaker, does it indicate that we are taking action upon something which is fraudulent. I take it that the situation is simply this: That the law school referred to has fallen, unconsciously, we are willing to assume, below the standard fixed by our constitution; and that being the fact, and I assume that it has been competently ascertained now to be the fact by the body whose business it was to ascertain it, there remains the logical course to pursue of dropping this law school from our roll of membership. It is needless to say that we will regret the necessity of such action, but we must do it if we are to maintain our character.

Therefore, sir, I move you that the recommendation of the Executive Committee be adopted.

The motion was seconded.

Clarence H. Miller, of Texas: It seems to me that this is a pretty serious matter, serious in the aspect that it lays down a procedure by which we are to be governed hereafter. Of course it only involves this school now, but it may involve other schools. The Constitution provides as follows in the 7th article:

(Reading the 7th article of the Articles of Association.)

Therefore, it is not competent, according to the Constitution, that the expulsion shall be by the Executive Committee, and for us simply to vote that the Executive Committee has acted wisely is not this meeting expelling this school, but it is the Executive Committee expelling the school.

It seems to me that if this provision of the Constitution has any force in it, no man here can vote intelligently without first having a hearing. I have not the slightest doubt that I will sustain the Executive Committee upon the evidence, but when

we have an issue raised I think it is proper and fundamental that the accused should be given an opportunity to be heard, the evidence against the accused first being presented, before we are called upon to vote. I think it will be contrary to the law and also to the spirit of our organization to permit the Executive Committee to expel any school. In saying this I do not wish to be understood as questioning the findings of the Executive Committee at all.

Seth Shepard, of the District of Columbia: Mr. President, I offer an amendment to the motion made by the gentleman from New York, viz., that this matter be referred back to the Executive Committee to be reported, together with the testimony taken by them, at our meeting next year.

Francis B. James, of Ohio: I desire to call the attention of the last speaker to article 10, which provides expressly that these matters shall be entrusted to the Executive Committee.

W. S. Curtis, of Missouri: It seems to me that this is a matter of interpretation. It is the duty of the Executive Committee to see that these requirements are fulfilled, and I believe that they have done so; they have collected the evidence and they have made up their minds. But I am hesitating, in accordance with the gentleman who spoke a few moments ago, in regard to this first case of expulsion as to how I am going to vote, and, if we are to determine right here, whether hereafter we shall hear evidence or whether we shall let the evidence be taken by the Executive Committee and then act upon their recommendation. I think we are in danger of being a little too hasty. Some gentleman has stated here that there will be no stigma cast upon this school by our action. No stigma, and a gentleman from that school here denying the charge! Whatever we do now, I feel that we shall hereafter wish to act upon a detailed report of the evidence.

Robert M. Hughes, of Virginia: It seems to me from the quotations that have been read from the Constitution of this Association that we are very much in the position of an appel-

late court. The Executive Committee are required to get the information and then we are required to take a vote upon it. Now, while I know nothing about the merits of this matter, it seems to me that for us to go ahead now and vote to expel this school, without even having the evidence in this case reported to us or read before us, would be like an appellate court deciding a case without reading the evidence.

William Draper Lewis, of Pennsylvania: There seems to be some hesitancy to act upon this report without hearing what the evidence was that was presented before the Executive Committee. I wish to ask for information whether any member of the Executive Committee would care to summarize the evidence taken before it. It seems to me if we are going to act upon this matter we should have a statement of the evidence taken before the Executive Committee.

The President: It never occurred to the Executive Committee that the members of this Association would ask for the evidence. It did not think this Association would have time to listen to the evidence, even if we had a stenographic report of it before us. If we had, and it had been read in detail before this Association, I cannot tell you when we would adjourn. I want to make that comment upon what has been said about reading the evidence. Then my second comment is this: that you will find a very great embarrassment in ascertaining facts if witnesses are to understand that everything they say upon an investigation of this character is to be reported in a public assemblage and go upon the report with their names attached to it.

William Draper Lewis: I think the Chair somewhat misunderstood my inquiry. I should be very loath to ask for the evidence under the names of the witnesses in detail, but I do wish to ask whether a summary of the evidence could not be stated by the Chair or by some member of the Executive Committee.

The President: I will say in answer to that that the charge against this school is not that in one or two instances it has

violated this provision of the articles of this Association, but that it has been its notorious practice to do so for years; that that is the understanding in the city of Chicago among members of the profession and among the other law schools.

John H. Wigmore, of Illinois: Since the Chair has used the words "other law schools in the city of Chicago," I would like say that no member of any school, other than the one specified in this resolution, has been called as a witness before your committee. I looked over the catalogue of that school the other day and I found that our requirements of three years ago as to the admission of students were obviously not complied with.

William Draper Lewis: I think we are to understand from the statement of the President that this school has repeatedly violated this requirement for years past to such an extent that not only is it worthy of being dropped from membership, but that if we withhold such action on the promise of its representative that hereafter it will obey the requirements, that practically it could not do so because such a large number of its present students and the class of students that come to it have not the requirements which our rules call for. I think, therefore, that I have ample reason for voting in favor of Mr. Terry's resolution. I never had any doubt that the school had violated the requirement, but my only doubt was whether it had violated it to such an extent that it was not harsh to disregard the promise of improvement on its part in the future.

E. W. Huffcut, of New York: I am afraid there is not any middle ground in proceedings of this sort between that which seems to be indicated by the Articles of Association and that which seems to have been suggested by some of the gentlemen on the floor tonight. The Articles of Association provide that the committee shall investigate all complaints and report its findings, not the evidence, with such recommendations as it shall deem proper, to the Association for action. That is what the committee has done. The Articles of Association indicate that when they were drawn it was the intention that

the Executive Committee should act as triers of the facts and report its findings, and that if the members of the Association accepted its findings, they should then act upon them, or if they thought the findings sufficient, they should act upon them. Now it is suggested that we should have the evidence ourselves and become as it were the triers of the facts. That might, perhaps, better satisfy our individual conscience as judges. Of course when the evidence is not before us, we are voting more or less in the dark ; but after all we are only voting that we are confident that the five gentlemen who have ascertained these facts have tried them fairly and that their findings are sustained by the evidence, and to reach that conclusion we must simply say we repose so much confidence in the Executive Committee that there is no alternative.

Any ground between our trying the facts and the Executive Committee's being the sole trier of the facts is impracticable, and I think our trying the facts is also impracticable and that the method pointed out by the Articles of Association is after all the only method by which any result whatever can be reached. Having been told, what we have been told by the Executive Committee, that the articles of our Association have not been complied with, and that this school has had thirty days' notice ; that in the opinion of the committee it has failed to comply with the provisions of the 6th and 7th Articles of Association, and that every right has been extended to the school to be heard, I see nothing for this Association to do except to concur in the findings and recommendation of the Executive Committee. If we put this over another year and send it to another committee for further investigation, we shall be confronted next year with the same objection, for in my judgment it will be impracticable for the Association, as a whole, ever to become the trier of the facts involved in an alleged violation of the Articles of Association.

W. S. Curtis, of Missouri : Notwithstanding what has been said, I am still hunting a middle ground, not so much for the purpose of guiding our action tonight as for the future. I

concede that it will not do to have all the evidence read here, but I am still inclined to think that the phrase "findings of fact" means about what it always means among lawyers. In other words, that if the Constitution says that the committee shall report its findings to us, that it shall do so. Whoever heard of findings of fact being a general pronouncement of guilty or not guilty? Now, I would like to have at least some general statement such as one would expect to find in the findings of fact of a referee appointed by the court. These so-called findings, in my judgment, are too general, and they should be made more specific.

H. S. Richards, of Wisconsin: As a member of the Executive Committee, I would like to say a word. To my mind, it would not add anything to the strength of the report if we were to say that in ten instances or in one instance the school referred to had violated the rules of the Association. The findings of the committee were the findings of a practice and not the finding of a particular instance. The first charge that the committee considered was whether or not this school was complying with our rules; and the finding of the committee on that point was that the school was graduating students who had not complied with the rule. Then the further count which was not enlarged upon so much in the committee, but it was nevertheless before the committee, was this, namely, the question of the school's having complied with the interpretation of the articles to the effect that certain preliminary education shall be exacted of a student prior to the legal study, except in certain special cases. Now, the members who have attended the previous meetings will recall that when this resolution was adopted there was some debate as to the meaning of it. It was explained by one speaker that what was meant was that while the school might have special students, it should not be permitted to have too large a class of special students nor make it a practice to admit men who could not comply with the requirements of the Association. In those two respects this school was found wanting, and it is the evidence submitted on those

points that was conclusive, to my mind at least as a member of the committee. As to the details of the evidence, as has been suggested here, it would not be possible to go into them with any satisfaction to the Association.

Guy Guernsey : May I be permitted one word more ?

The President : Certainly.

Guy Guernsey : I have been the secretary of this institution only about five months. I have charge of the records of the school. I do not doubt that the committee made as careful an investigation as they could under the circumstances. I was notified some time ago that there was to be a meeting of the committee at which time we would be called on to explain certain things, or to defend ourselves ; but I did not know upon what lines, until within a week, when I received a letter saying that it would be for a violation of article 6. I did not know of any case in which we had violated that article. I have not brought the books of the institution with me, although I would have done so if I had known exactly what was wanted. It appears to me that the by-laws do not say here, nor is there any resolution that says, that we shall have a three years' or a four years' course of preparation in our students before they enter. Indeed, the remarks made by Mr. Joseph H. Beale, Jr., at Hot Springs three years ago, as I find them reported in the proceedings, seem to be to the contrary. We have admitted students, and do now, and shall continue to do so, as we are permitted to do by this resolution, which does not take effect until 1907, who have not attained the required degree of proficiency. But that we graduate them I still deny ; at least we have not done so since I became connected with the school. I was before the committee a few minutes this morning, but I was not before them yesterday, as the President has mistakenly stated. I answered some questions that were put to me before the committee, and I stick to it that I answered them correctly. I think it is due to us that we should be given a chance to show our books here. We have the applications of every

student who has ever entered the school, and we want to remain a member of the Association.

The President: May I ask the gentleman whether, in his assertion with reference to the graduation of students, he is speaking of the commencement this last June after our investigation took place, or whether he refers to preceding years?

Guy Guernsey: I only speak of the last graduation, as that is the only one within my knowledge; but I have records as to former graduations. I did not bring them with me, because I did not understand that they were in question; and nothing short of those records would show what the fact is.

The President: You do not feel competent, then, tonight, to declare that your school has not been doing this business?

Guy Guernsey: No, sir.

The President: You simply say that last June you did not graduate anybody except in compliance with our rules?

Guy Guernsey: I did not know that this was coming up until very recently. I said within a week. I cannot speak of my own knowledge as to the graduations before last June, of course.

The President: I should correct my statement made before: The gentleman was before our committee this morning, and not yesterday. I had in mind that we did have other schools before us.

The Secretary: As a member of the Executive Committee, I feel I ought to say a word. The question before us is this: Whether this Association has committed a duty to the hands of its Executive Committee and whether the Executive Committee is competent to perform that duty, and whether in the attempted performance of that duty it has done what it was authorized and expected to do under the resolutions of this Association. Now, it occurs to me that if the Executive Committee is expected to do more than it has done, in the performance of a duty which is one of the most unpleasant that it could be called on to perform; if it is expected to do more



than it has done, then there will never be an Executive Committee in this Association which will voluntarily undertake such work. I understood, and I think every member of the Association understood, that the committee was given instructions to investigate whether or not particular schools, or any school, had not lived up to the requirements of the rules of this Association, and after that investigation that the committee was to report its conclusions to the Association; and that whatever conclusion it arrived at would be regarded as final. If that is not correct, what is to follow? An investigation by the Association itself? If an investigation by the Association itself is to follow an investigation by the committee, what has been the benefit, what has been the purpose of all this work? If the Association desires, as has been intimated here, to examine and to hear the evidence, I suppose the committee would be glad to turn the whole matter over and be relieved of this duty in the future. Now we ought to determine tonight whether a recommendation of the Executive Committee is to be accepted or not.

Seth Shepard: I cannot permit the issue in this matter to be shifted, as it has been, into one whether or not we are on a question of veracity, to support the committee. That is not the issue. It is not a question of want of confidence in the Executive Committee; I shall vote against the adoption of the committee's recommendation, because I cannot permit my judgment as a lawyer to be governed in deciding a question of this kind by the report of a committee, without hearing the evidence upon which that committee acted. I trust that under no circumstances shall we delegate our power to a committee to hear secretly charges against anyone, and act upon them, and then at the end be told that we cannot be given the testimony of the witnesses, because witnesses would not testify if they knew their names were to be given out. Would you, sir, rise in a court of justice and maintain such a proposition as that? The grand jury hears witnesses in secret, but then indictments are presented and the accused party is tried in the

proper tribunal, and the witnesses who testified before the grand jury must again testify before the petit jury. I want to say here that when a witness tells me that he is willing to testify secretly to facts and take my judgment on them, but that he will not testify if his name is to be given to the party against whom he testifies, I want to say that I should demand corroboration of the evidence of that witness. If a motion is not before this Association as a substitute, then I will move as a substitute that this matter be referred to the Executive Committee, and that they be requested to return findings of fact giving a summary of the facts which they find have been established against this school; such findings of fact as I believe we as lawyers will understand. I make this additional statement, and I trust everyone will believe it, that I do not make it out of any friendliness to the assailed institution, but as an American lawyer remembering the manner of trial in our courts, remembering that our courts supervise private associations, clubs and institutions and require them to give a man's case a hearing before they can arbitrarily expel him.

The President: May I say that, as far as I am personally concerned, we do not intend any discourtesy to the committee; that this is a question of the construction of the Constitution, as to what it means. Now, my understanding of the Articles of Association is that the intention was that the Executive Committee should investigate such cases as this and report the result of their investigation to the Association, and that then the power of expulsion rested with the Association; the intention being that it appears from the statement of the Executive Committee, made to this Association, that there had been such an investigation as would warrant the action of this Association in expelling that school, and unless you were satisfied from what was offered by the Executive Committee or by the school that an injustice has been done by the recommendation of the committee; then you were to act. Now, that is my understanding of the intention of the Constitution. If we are to proceed as in criminal courts, and try this man's case as we

try a man accused of crime, then do not send this matter to the Executive Committee, but have your trial right here, so that you can see the witnesses, as well as hear them.

William E. Mikell, of Pennsylvania: I object, as a member of the committee, to be placed in the position that it is assumed by some of the gentlemen here the Executive Committee is placed in, of urging the Association to expel any school. I think the issue has been shifted entirely, and that some gentlemen here imagine that the action on this question will be either to sustain the Executive Committee or to condemn it. Now, I do not understand that that is the position that this question is in, or that the Executive Committee should be placed in. The Executive Committee is not on trial.

The President: Was there a second to the substitute offered by Mr. Shepard? The Chair did not hear any. There not appearing to have been a second to it, the question is on the motion made by Mr. Terry.

Seth Shepard: I call for a vote by schools.

The President: Then under the Articles of Association the vote will be taken by schools.

Seth Shepard: I withdraw my request, in order to save time, and let the vote be taken *viva voce*.

The President: As the request is withdrawn, the vote will be taken by the delegates.

Guy Guernsey: As I represent the school which is concerned, Mr. President, I request that the vote be taken by the call of the schools.

The President: Then the vote will be so taken.

The roll was called, and the motion made by C. T. Terry, of New York, was adopted by a vote of sixteen in favor, to six against.

The President: The motion prevails, and the recommendation of the committee is adopted.

Is the committee appointed on the matter of establishing an *American Law School Review* ready to report?

H. S. Richards, of Wisconsin : One of the members of that committee is not present, but Mr. Huffcut and myself are here. Upon investigation we found that the attitude of various members of the Association was rather lukewarm, and for that reason we did not put the project through last year, and agreed to re-submit it to the Association. Both Mr. Kirchwey and myself have felt that there is a field for such a magazine, provided it is properly handled, and agreed that we report favorably, with the additional suggestion that if the Association feels that the project is one to be carried through, the same business propositions that were submitted to us last year are still open for our acceptance.

On motion, the report of the committee was received.

Seth Shepard : I move that the matter be now laid on the table, or put over to another meeting of the Association, so that in the meantime we may have an opportunity to consider it fully.

The motion was seconded and adopted.

Seth Shepard : In order that we may avoid the embarrassment we have been in during the last half-hour, it seems to me there ought to be an amendment, or a re-statement of the section with reference to the expulsion of members, and I therefore move that a committee of three be appointed by the Chair to re-state that provision of the Constitution in such a way that we may all know in the future what ought to be done when such a matter as this comes up.

The motion was seconded and adopted.

The President : The Chair will announce the names of that committee later, and hand them to the Secretary.

Is the committee appointed with reference to the memorial submitted by Professor Wigmore ready to report ?

John H. Wigmore, of Illinois : There is a long report and a short resolution, on which your committee would like to ask the sense of the meeting. The report is signed by Mr. Mikell

and myself, the third member of the committee being in Europe.

*(The report follows these Minutes.)*

John H. Wigmore: We ask you to authorize the appointment of a committee, and merely to have the privilege of using the prestige of the Association's name, without any pecuniary responsibility being incurred on the part of the Association.

W. E. Walz, of Maine: I second the adoption of that resolution.

E. W. Huffcut, of New York: I think this is an important work, and if done by this Association I think we shall all be much benefited by it, and I therefore cordially support the motion to adopt the resolution.

The resolution was adopted.

The President: I now call for the report of Dean Ames, who was appointed a committee to see Mr. Carnegie with reference to certain funds which it was desired to obtain in connection with some matters.

John H. Wigmore: Dean Ames was obliged to leave, and he commissioned me to report that he had deferred the matter until other enterprises should be further along and the necessity should be made to appear more plainly than just at present; but in the meantime he is very anxious that the following resolution should receive the sanction of this Association.

*Resolved*, That the future of the study of American legal history demands an immediate undertaking of the preparation of a check list (or short title bibliography) of the materials bearing on the law of the American Colonies before 1776;

2. That for the purpose of organizing this work and securing the co-operation of all branches of scholarship interested, a committee of four be appointed by the President of this Association, to confer with similar committees from the American Library Association and the American Historical Society, and in joint action with these committees to organize the work

in the proper hands and to report progress at the next meeting of this Association.

On motion, the resolution was adopted.

W. E. Walz, of Maine: I offer the following resolution:

*Resolved*, That this Association of American Law Schools approves of the suggestions contained in the address of the President in favor of legislation for the protection of law degrees; that it expresses the hope that the American Bar Association will co-operate in the same direction and that to this end it hereby directs that the action of this Association on the subject be communicated to the American Bar Association at the time of the presentation of the report of the Committee on Legal Education and Admissions to the Bar to that body.

The resolution was duly seconded and was adopted.

John H. Wigmore: Is that intended as committing the Association to every detail of the matter so forcibly recommended by the President?

The President: My recommendation was that the Committee on Legal Education should lay the matter before the American Bar Association; namely, that no law school should have the right to confer the degree of J. D. except those which have the right to confer the LL. B. degree, and that in conferring the J. D. degree it shall only be conferred on such men.

John H. Wigmore: I respectfully oppose the latter part of that proposition as a mere detail, but the former part of it I favor as a high moral question.

The President: Before we adjourn, the minutes which have been published of the proceedings of the last meeting of the Association ought to be approved. I believe that has always been customary.

E. W. Huffcut: I move that the minutes of the last meeting as printed be approved.

The motion was duly seconded and was adopted.

The President: We will now receive the report of the Committee on Nominations.

E. W. Huffcut: The Committee on Nominations, having considered the long and favorable services of our Secretary-Treasurer, has decided to omit his further duties in that office, and recommend to the Association his name as President. The committee recommends the election of William P. Rogers, of Cincinnati, Ohio, as President, and for Secretary-Treasurer W. R. Vance, of the George Washington University School of Law. For members of the Executive Committee, Henry Wade Rogers, of Yale; John H. Wigmore, of the Northwestern University, and James B. Brooks, of the Syracuse University.

On motion, the report of the Committee on Nominations was received and approved.

On motion, the Chairman of the Nominating Committee cast the vote of the Association for the election of the gentlemen whose names were recommended for election, and they were declared duly elected to the respective offices.

The President: It is now in order to receive the report of the Auditing Committee.

John H. Wigmore: The Auditing Committee would report that they have gone over the accounts of the Treasurer, and found them correct in every particular.

On motion the report was received, and the accounts of the Treasurer approved.

The President: This, I believe, completes the business of the Association, and I declare this meeting adjourned without day.

W. P. ROGERS,  
*Secretary.*

ADDRESS OF THE PRESIDENT OF THE ASSO-  
CIATION OF AMERICAN LAW SCHOOLS.

BY

HENRY WADE ROGERS,

DEAN OF THE LAW SCHOOL OF YALE UNIVERSITY.

As the Association of American Law Schools was organized in 1900, we are assembled at the sixth annual meeting.

The Constitution requires this body to meet annually at the time and place fixed for the annual meeting of the American Bar Association. That Association finds its convenience served by holding its meetings the last of August. A more inconvenient time than this for university teachers could hardly be selected. Organizations composed of those connected with universities are accustomed almost without exception to hold their meetings in December. Then, too, the Bar Association may sometimes find its own advantages promoted by holding its meetings in a remote section of the country and at a place so distant from the schools represented in this Association as to cause serious inconvenience, because of the place as well as the time of the meeting. The suggestion is made that it may be well for our Association to consider the question of the expediency of so amending the Constitution as to invest the Executive Committee with discretion concerning the time and place of meeting.

Since the last meeting of the Association of American Law Schools, the death has occurred of three distinguished law teachers: Christopher Columbus Langdell, George Tucker Bispham and George L. Reinhard. Mr. Langdell, whose death took place at Cambridge on July 6, 1906, was professor emeritus of the Harvard Law School, and was eighty years of age. He became dean in 1870 and resigned the position in 1895. In 1903 Harvard University established, in his honor,



a Langdell professorship. This was an unprecedented compliment for that university to pay to a living man. And in 1906 Harvard named, while he was still living, its new law building "Langdell Hall." It can be said that there has been no law teacher in America who has attained a fame equal to his. This is due to the revolution which he wrought in the teaching of law. The Langdell system of instruction, adopted in its entirety by some schools and employed in part by many others, has made his name a familiar one to the profession in England and America.

Mr. Bispham had been for many years professor of law at the University of Pennsylvania. He died at Newport on July 28, 1906, at the age of sixty-eight. Since 1861 he had practiced law in Philadelphia, and at one time he was the counsel of the Pennsylvania Railroad. As an author of an admirable treatise on equity, his name was well known to law teachers and law students.

Judge Reinhard was dean of the law school of the University of Indiana. His death occurred at his home in Bloomington on July 13, 1906. He was accustomed to be present at the meetings of this Association and he freely participated in the discussions of this body. Law teaching was with him, as with Dean Langdell, a vocation, while with Mr. Bispham it was an avocation.

The question as to what standard of preliminary education should be required of students applying for admission to the law schools continues to be one of the most important subjects this Association can have before it. That any law schools in the United States should continue to admit students as candidates for a degree without regard to their preliminary education should be and is occasion for humiliation. The American Bar Association has said emphatically that, at least, a high school education should be required. It is impossible to understand how any school which desires to be esteemed can longer admit students without complying with this recommendation.

In the report submitted to the American Bar Association in 1903 by its Committee on Legal Education, that committee disclaimed expressing any opinion on the question whether a college degree should be required of students seeking admission to the schools. It regarded that question as distinctively one of university policy.

In England, Oxford University does not confer the law degree upon one who is not a graduate in arts, either of Oxford University or some university which Oxford is willing to recognize.

In Scotland, no university can confer the degree of LL. B. on anyone who has not already obtained an arts degree.

In Ireland, the LL. B. degree is granted after two years of law study to those who hold an A. B. degree.

In France, to be entered at the *École de droit*, the student is required to produce, *inter alia*, the diploma of *bachelier de lettres*, or, if he has not studied in France, an equivalent qualification.

No American law school has as yet conditioned its law degree absolutely in the attainment of an academic degree. Harvard in 1896-97 made the possession of such a degree necessary for matriculation as a regular student. But persons without such a degree can still be admitted at Harvard as special students, and can obtain the law degree if they attain a sufficiently high stand on the examinations. And the same rule practically exists at Columbia.

Yale University has recently announced that, beginning with the academic year 1909, it will require students to have had the equivalent of at least two full years of work of collegiate grade.

Two years of college work is also to be required, or is already required, by the law schools connected with the state universities of North Carolina, Ohio, West Virginia and Wisconsin, and by that of Trinity College at Durham, North Carolina. Within the immediate future, other schools will, no doubt, take similar action. With foreign universities insisting on the degree

requirements, American universities cannot long remain content with a diploma from a high school as the admission requirement of their professional schools.

The discussion concerning legal education in the South which occurred at the meeting of the Association a year ago has seemed to make it desirable to bring to your attention the facts as to conditions which prevail in the states which lie south of the Potomac.

We will consider first the law schools established in these states, and then the rules by which admission to the Bar is regulated.

Alabama has one law school, that of the State University at Tuscaloosa. It has a two years' course, which was established in 1896. Any person of good moral character is allowed to matriculate. But if he is a candidate for a degree he must pass such examinations in English, United States history and general history as shall satisfy the faculty. The faculty are required to give their entire time to the school. The number of students enrolled is 39.

Arkansas also has one school, that of the State University. It is established at Little Rock. Its course of instruction covers a period of two years. Applicants are admitted "who are possessed of a fair English education, such as may be acquired in our public schools." By a recent act of the legislature all graduates of the law department of the State University are admitted to the practice of law in all the courts of the state. The number of students enrolled is 46.

Florida has one, that of the John B. Stetson University at DeLand. The university obtained its charter in 1886, but the law school was not established until 1900. Its course covers a period of two years of thirty-three weeks each, and the number of students enrolled is thirty. Applicants for admission, if candidates for a degree, "must give satisfactory evidence of educational qualifications sufficient to enable them to pursue successfully the study of law." By special act of the legislature any person who is a graduate of the College of Law of the John

B. Stetson University can be admitted to the Bar on motion in open court upon presentation of his diploma. Persons coming from other law schools, although they may have had a three years' course, must pass an examination in open court. The arrangement is not, I am informed, satisfactory to the Bar of the state, and seems to be a piece of special legislation intended to strengthen the hands of the law faculty of this particular university.

Georgia has three, that of the State University at Athens, that of Mercer University at Macon, a Baptist institution, and that of Emory College at Oxford, which is a Methodist institution. The law school of the State University has a two years' course, which was established five years ago. It requires applicants for admission to "pass a satisfactory examination upon the elements of an English education." In speaking of the abandonment of the one year course and the adoption of the two years' course, the authorities of the school say: "The wisdom, if not the necessity, of that action has never been doubtful. The only apprehension was that the prospective students of law would not appreciate the advantages, and that lack of sufficient numbers of students would impede the progress of the department. The result has shown that these apprehensions are groundless." At the time this action of the university was taken the other law schools of this state conferred the bachelor's degree at the end of one year's study, and their course is still a one year course. It is also to be had in mind that, under the laws of this state, a student seeking admission to the Bar is not required to study for any prescribed period. It was under these adverse conditions that the law school of the University of Georgia took its advance step, and the success which attended it ought to encourage the remaining schools of the state to take the same step if they are not yet prepared to adopt the three years' course. It is said against the University of Georgia that it admits to its second year class students who produce the certificate of a lawyer that they have studied law for a year. It is, of course, unsound to

assume that a student studying in an office can make as much progress in a year as can be made by a student studying in a law school. But it must be said that while the University of Georgia will allow such students to enter the second year class, it only extends that privilege to those who pass an examination on the subjects of the first year.

The law school of Mercer University was established in 1875 and reorganized in 1893. While it has a strong faculty, Emory Speer, Judge of the United States District Court, being dean, it confers the degree of LL. B. at the end of one year of law study, and the catalogue makes no mention of any admission requirements.

The number of law students at the University of Georgia is 41, at Mercer University 46, and at Emory College 1.

Kentucky has four, the law school of the University of Kentucky at Lexington, that of Central University at Danville, the law school of the University of Louisville, the Jefferson School of Law, also at Louisville. All of these schools have a two years' course. The law school of the University of Louisville has been in existence for more than sixty years. The Jefferson School of Law was organized in 1905. Its sessions are held in the evening and cover a period of eight months, and it is the largest school in the state. Central University announces that no examinations are required for admission to the law school, and no entrance examinations seem to be required in any of the law schools of this state.

The law school of Central University has 20 students, Louisville University 35, the Jefferson School of Law 63, Kentucky University 25.

Louisiana has one, that of Tulane University at New Orleans. It is one of the oldest law schools in the United States and was established in 1847. The course is one of two years of six months each. But a student who has studied law for a year in an office may be admitted to the second year

class. No examination for admission seems to be required. The number of students enrolled was 82.

The authorities of the Louisiana State University at Baton Rouge have decided during the present year to establish a law school and to open it in September. It announces a two years' course for the degree of LL. B. It will require all students who are candidates for a degree to possess a high school education or its equivalent.

Mississippi has two, that of the University of Mississippi, which is established near Oxford, and another which is connected with Millsaps College. The course at the University of Mississippi covers two years of nine months each, and students are not permitted to take the two courses contemporaneously. Applicants for admission, "if not graduates of some college, will be required to exhibit satisfactory certificates of moral character" the catalogue announces. But nothing is said as to any examination being necessary for admission, and no preliminary examination is required by the law school of Millsaps College. The attendance at the University school is 58 and at Millsaps College 13.

North Carolina has four. The schools are those connected with the State University at Chapel Hill, with Trinity College at Durham, with Wake Forest College at Raleigh, and with Shaw University, which is also at Raleigh. They all have a three years' course. Shaw University is an institution established for colored men, and very few of this race apply for admission to the Bar of the state. The requirements governing the admission of students to the law schools are higher in this state than in any other state in the South. In this respect an example has indeed been set to the whole country. The law school of the University of North Carolina has, for twenty-five years, declined to confer the degree of bachelor of laws upon anyone who has not had at least two years of a college (academic) course. It thus leads all the law schools of the United States in first establishing a high requirement in the matter of preliminary education. The

law school of Trinity College, which is a member of this Association and was established with an endowment in 1904, followed the example of the State University in also requiring its students to have completed the first two years of a college course. As Trinity followed the State University in this respect, let us hope that the latter may follow the example of the former and enter this Association. We should all be glad to welcome a school which a quarter of a century ago took such an advanced position in the matter of entrance requirements that not half a dozen schools in the entire country have even yet been able to do likewise.

The law school of the University of North Carolina has 104 students, that of Trinity College 16, of Wake Forest University 85, and of Shaw University 8.

South Carolina has two schools, both being established at Columbia, and each having a two years' course. The law school of South Carolina College exists for the white race and has 30 students. The law school of Allen University was established for the colored race. For the last few years it has had no students, but the President reports that there is a faculty which is ready to teach and that "they will probably have a student or two next term." This law school has graduated about forty men, but there seems to be no great demand for colored lawyers in South Carolina. The catalogue, however, states that the majority of those graduated "are meeting with a great degree of success in life." No admission requirements are prescribed, the catalogue simply announcing that "a knowledge of the Latin language is a great help in the study of law, and a course in liberal studies is recommended."

Tennessee has six schools. The schools of the University of Tennessee at Knoxville, of the University of the South at Sewanee, of Vanderbilt University at Nashville, and of Grant University at Chattanooga, have a two years' course. Walden University law school in 1905 established a three years' course, and is the only school in the state which has such a course. It is a school for colored men and its cata-

logue states that it "is the only leading law school in the whole South for the education of colored attorneys." The school was organized in 1877 as the law department of Central Tennessee College and in 1900 the name was changed to Walden University. It is established at Nashville. Applicants for admission must give evidence of good moral character and that they have attended some reputable high school, academy, normal or college preparatory school for at least two years.

The law school of Cumberland University at Lebanon has a course of one year for the degree of LL. B. This is one of oldest schools in the country, having been established in 1847. It has no entrance requirements and publicly advertises the fact in the newspapers. The result is that it enrolls more students than any other school in the state. The catalogue for 1906 does not show that a single student was enrolled who possessed an academic degree. The total enrollment was 118, and of this number 27 are credited with "taking a partial course." The law school of the University of Tennessee enrolled 62, Grant University 60, Vanderbilt University 46, the University of the South 18, and Walden University 4.

The law school of the University of Tennessee requires all applicants to have had a high school education. That of the University of the South states "that the requirements for admission to the university apply to law students; yet, for entry to the junior class students of mature age and earnest purpose may not be held to rigid examination." Vanderbilt University announces that applicants are "not required to undergo a special examination, but must satisfy the faculty of their fitness to undertake the work." Grant University says that applicants "will be expected to furnish satisfactory evidence of at least a fair education in the common branches." It adds that students who have no diplomas from a college, academy or high school, but "who are able to pass an examination testing ability to read law books intelligently and comprehend law lectures will be admitted."



The law school connected with the University of Tennessee has been a member of this Association until the present year, when its membership is forfeited under the constitutional provision which now makes a three years' course essential to membership in this body. It is a source of regret that the University of Tennessee has not seen it possible as yet to place its law school upon the three years' basis. The dean of that school, who is so well known to all of us, is anxious for a three years' course, as is the dean of the law school of Vanderbilt University. They have the best wishes of this Association for the speedy realization of their ambition. We hope that it will not be long before the representatives of each of these schools will be sitting in the councils of this Association.

Texas has two schools. The law school of the University of Texas is a member of this Association and is the largest school in the South, having 247 students enrolled. It has a three years' course, adopted three years ago. Candidates for admission must have had a high school education. The change from a two years' to a three years' basis did not, after the first year, decrease attendance. A law school was established in 1893 in connection with Fort Worth University. Its catalogue fails to show that any students were in attendance during the past year. It also fails to show the length of the course and the nature of the examination of applicants for admission.

Virginia has three schools, that of the University of Virginia at Charlottesville, of the Washington and Lee University at Lexington, and the College of Law at Richmond. The law school of the University of Virginia was opened in 1826, the year after that of Yale University. The school connected with that of Washington and Lee University was founded in 1849. The Richmond College of Law was established in 1870 and existed until 1882, when it was discontinued. It was re-established in 1890. All three of these schools now have a two years' course. The University of Virginia has had such a course for

a number of years. But the two year rule goes into effect at the Washington and Lee University with the academic year 1906-07. And the Richmond College of Law has also just established the two years' course. Students who enter the law school of the University of Virginia must have had a high school education. The law school of Washington and Lee University announces that "no entrance examinations are required for admission into the law school, but it is expected that all students applying for entrance shall have had at least the advantages of a good English education." The Richmond College of Law states that "each applicant for admission must give evidence of fair general education."

The law school of Washington and Lee University asserts in its catalogue that inasmuch as each class is given "about" fifteen hours of lectures each week the amount of work prescribed "nearly or quite equals that required in those institutions which allow three years to their courses." But there are a number of three year schools, of which Yale is one, which prescribe fifteen hours of work for each of the three years. It will not do to attach too great importance to the fact that one school prescribes ten hours of work, as at Harvard, or fifteen hours, as at Yale, if only the course be a three years' course with due opportunity for reflection and assimilation. Three years of ten hours of prescribed work in each year is certainly far more valuable to the student than two years of fifteen hours of prescribed work. That fact should never be lost sight of either by instructor or student. The catalogue of the Richmond College of Law makes a strange misstatement: it announces that there is no law school in the South, except two colored schools, which is eligible for membership in the Association of American Law Schools, as there is none having a three years' course. The law school of the University of Virginia has 200 students enrolled, and is the second in size in the South. Washington and Lee has 75 and the law school at Richmond 34.

West Virginia has but one law school, that of the State

University at Morgantown. This school has a two years' course. Its admission requirements are the same as those prescribed for admission to the College of Arts and Sciences. It confers the degree of LL. B. only upon those who have had two years of a college course. To all others it grants simply a diploma. Its last catalogue shows that forty-three students were candidates for a degree and twenty-four for a diploma. Not only does the diploma or degree of the school admit to the Bar of the state, but the faculty is constituted a state commission to examine all applicants for admission to the Bar. No other state entrusts to the faculty of a law school the right to pass upon all applicants. The objection to such a provision is that a faculty might be inclined to favor its own students and admit them to the Bar with too little of preparation, while at the same time it excluded others whose knowledge of the law might, at least, equal that possessed by some of those to whom the license is granted. This Association and the American Bar Association has several times gone on record as opposed to candidates being admitted to the Bar on a law school diploma. The practice is a vicious one, and tends to low standards in the schools. The West Virginia idea goes a step farther and gives a law faculty not only the power to admit its own students, but, in addition the right to exclude those who are not. No law faculty should possess any such authority. It seems to be indefensible from any point of view.

To summarize results, there are in the states south of the Potomac thirty law schools which had during the past year a total attendance of about 1542 students. These states, according to the census of 1900, had a population of 22,081,639. The population of the whole country was 76,303,387. If we assume that the number of law schools in the United States was approximately 125, and that the total of students in law schools was about 15,000, it will be seen that these states have less than a proportionate share of the law schools of the country, and that the number of students in the schools is proportionately much less in these states than in the states of the North.

Indeed, the small number of students in the law schools of the South as compared with the number in the schools of the rest of the country is a fact of no little significance.

That there should be in these states only five law schools having a three years' course of study for the bachelor's degree, and that two of the five should be schools for the colored race, are facts which also are not without significance.

That a number of the schools have recently abandoned a one year course and come to the two years' basis is a subject for congratulation. That there are even two or three schools left which persist in maintaining a one year course for the degree is a surprising, and I may add with truth, humiliating fact.

Another striking fact in connection with the law schools of the South is that in so few of them is attention paid to the preliminary education of students seeking admission to the schools.

If we examine the rules which govern the admission of students to the Bar in the states of the South, we shall find some explanation of the fact that there are so few students in Southern law schools.

No definite period of law study is prescribed in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, Texas or Virginia.

Two years are prescribed in North Carolina, South Carolina and West Virginia.

The prevalent theory in the South is that justice requires that an applicant for admission should be allowed to show at any time that he is qualified to pass the examination, and that as a bright man can prepare himself in less time than a dull one, he should not be shut out by any fixed rule as to time. This theory has long been rejected in the Northern States. It has been repudiated by the American Bar Association, which has gone on record in favor of a three years' requirement. The Southern rule fails to recognize the fact that while a student may in a comparatively short

time "cram" for an examination; the knowledge which he thus acquires is of very little value to him and is lost almost as soon as it is acquired. The interests of the commonwealth are not subserved, but very seriously injured, by the admission of incompetent attorneys to the Bar. Cases are mismanaged, the interests of clients sacrificed, the expenses of litigation enormously increased and the courts burdened as a result of this short-sighted and mistaken policy. The judgment of the profession in this country and abroad is that three years is none too long a time to enable the student to prepare himself properly for admission to the Bar. If less time is devoted to the work of preparation, it becomes a process of "cramming" to pass an examination and no adequate time is afforded for proper digestion and assimilation of legal principles. Rules must be made for the average man and not to accommodate an occasional genius. If the three year rule now and then operates to the prejudice of a genius, it is better that it should be so than that a rule should be established for his accommodation which works evil to all others and to the commonwealth. Law professors in the South should take the lead in their respective states in creating a sound opinion within the profession on this important subject. So long as students can come to the Bar by "cramming" for an examination in a three months' study of the law the difficulty of bringing the law schools to a three years' basis in any state which tolerates such conditions is very manifest.

Again, no examination on literary subjects, but only on legal ones, is demanded of applicants for admission to the Bar in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia. The Supreme Court of Texas, however, lays down the following rule: "Since some general education is necessary to a practice of law, it shall be the duty of the Board of Examiners to reject any applicant who, in their opinion, may show himself so deficient as not to be capable of performing the duties of an attorney."

In West Virginia all applicants must have had at least a high school education.

It is impossible to understand why in the states named the profession tolerates the condition which prevails, and under which men come to the Bar without any adequate preliminary education. It certainly is not in the interest of the profession, or in that of the commonwealth, that men without education should be admitted to the Bar. That it is not in the interest of the men themselves is also certain, but if it were otherwise it would be impossible to justify the sacrifice of the dignity and welfare of the profession and of the state's weal in order that a few individuals, unfit and undeserving, may find an easy access to the ranks of a great and honorable profession.

The fact that men can come to the Bar of these states without being subjected to any test as to their preliminary education explains why in so many of the Southern law schools, even in those connected with reputable universities, no entrance requirements are prescribed. That the law schools are not justified in conferring their degrees without regard to the preliminary education of the recipients by the failure of the state to subject to such a test those who seek admission to the Bar is clearly evident. But the absence of such a test on the part of the state embarrasses the schools in establishing a high school education as a condition of admission to their classes in accordance with the recommendation of the American Bar Association. When a Southern school, in the absence of any state test, establishes a high preliminary requirement, as has been done by the two schools in North Carolina, the action, I am sure, commands our enthusiastic appreciation. Let us hope that our brethren, the law teachers of the South, will also take the lead in their respective communities in demanding that a suitable state test be prescribed as to the preliminary education of all applicants for admission to the Bar. May we not hope that whether or not they at once succeed in securing this reform in the state law they will steadily advance

the standard of their own schools, and conform to the recommendations of the American Bar Association.

A federal judge living in the South gives the following explanation of the reason why the law schools in his state cannot adopt a three years' course, and as he is also the dean of a law school, his opinion has additional significance from that fact:

"The principal reason why, in my opinion, the law schools of ——— cannot come to the three years' basis now requisite in so many Northern schools is that, while we have widely diffused prosperity, we have comparatively few men who are pecuniarily able to give their sons collegiate training and a professional training of more than one year. It is usually true also that the sons of the wealthy who have the means of adopting a longer novitiate prefer the more renowned schools, such as Yale, Harvard, Columbia and the like."

If the distinguished jurist is correct in assuming that there are few men in the South who have the means to give their sons more than five years of educational training after the completion of a high school course, he nevertheless falls into a decided error when he assumes that a proper division of this time is to assign four years of it to the college course and one to the professional school. A much wiser distribution of it would be to give two years to the college course and three years to the professional school.

I venture to think also that the law schools of the South should not plan their work to accommodate the few spoken of by the judge whose words have been quoted, unless they are prepared to insist on a college degree as a condition for graduation in law. So long as these schools do not even demand a high school education as a condition for admission, why should they refuse the vast majority of their students the benefit of three years of sound professional training and put them off in many cases with but one year of such training in order to meet the convenience of the comparatively small number of college-trained students who enter their classes?

The real explanation of existing conditions is not the poverty of the South, but the indifference with which this subject

has been regarded by the profession in that section of the country. At the close of the war the South was certainly in a pitiable condition of poverty; the people had lost their slaves, their lands had depreciated in value, and their wealth had been destroyed. But forty years have passed since the war ended and there is a New South. That section has wonderfully prospered. Its industries have become diversified, and every department of life has improved. The whole South has been covered with a network of railroads. Its lands have been brought to a higher state of cultivation than ever before was known. Its crops have been more diversified. Everywhere are telephones and electric lights. It has made great progress, too, in education and in the building up of a system of common schools. But the progress in professional education has not kept pace with the progress made in other directions. Here and there have been men like Ward Hunt, of Louisiana, Dean Lile, of Virginia, and Dean Ingersoll, of Tennessee, who have lifted up their voices and appealed for higher standards. But their appeal has been in the main unheeded, and their voice has been as of one crying in the wilderness.

Throughout the South generally admission to the Bar signifies little. The examinations are as a rule notoriously and discreditably lax. In a report made to the Tennessee Bar Association in 1899, by its Committee on Legal Education, the condition existing in that state was described as follows:

"A license to practice law, procured in Tennessee, imports nothing either as to the character of the holder or his professional acquirements. The examinations for admission to the Bar, as conducted in this state, are notoriously loose. It is generally accepted that almost any person can, in one way or another, get a license to practice law in the State of Tennessee."

At a meeting of the Virginia Bar Association in 1901 the dean of the law school of the University of Virginia stated that in Virginia any young man could in three months qualify himself to stand the examination for admission to the Bar of that state. No one called in question the truth of his state-



ment. The Committee on Legal Education had reported in favor of changing the rules so as to require an applicant to study law for two years and also to authorize the Court of Appeals (which conducts the examination of all applicants) to reject any candidate if it should discover from his papers that his general education was so deficient as to make him obviously unfit to enter the profession. In explanation of this last provision, it was stated that the court paid no attention to an applicant's general education or the lack of it as it did not feel authorized under the existing rules to do otherwise. The report, which I am confident we will unanimously agree was very conservative, provoked a prolonged discussion and an opposition which was so general and pronounced that the Association found it desirable to adjourn without taking further action than to postpone its further consideration until the next year. Nothing has ever been heard of it since. Its advocates were so discouraged that they have never yet ventured to bring the matter again to the attention of the Association. The Chairman of the committee making the report was Dean Lile, of the University of Virginia, who said at the time that he desired to go very much further than the recommendations, but that he abstained, as he did not wish to "shock" the Association. I venture the opinion that what the Association most needed was a "shock," and that even this very mild one, which it certainly received, did good, although no tangible result has yet come from it.

At a meeting of the Bar Association of Georgia, in 1902, Chancellor Hill of the State University, referred to the fact that a young man in that state had recently passed the Bar examination after thirty days' study. And he stated that numerous instances were known of applicants passing the Georgia examinations "after studying during six months or less."

A discussion in the Bar Association of Texas, in 1900, sheds considerable light on conditions in that state. One of the professors of the law school of the State University

declared that persons were being constantly admitted to the Bar of Texas who were without qualifications. "Many of these young men," he said, "secured license by knowing what questions would be asked and through the kindness of some friend on the board of examiners who would say, 'Oh, he is a common sense fellow; he will make a lawyer some day.'" And the President of the Association, in 1894, in his address declared that in his experience of nineteen years he could only call to mind one applicant who had been rejected. In 1903, the Committee on Legal Education reported in favor of requiring all applicants to be examined on literary subjects, but the Association after a lengthy discussion rejected the recommendation. One member, who could not conceal his contempt for the suggestion that applicants should pass an examination in elementary Latin, announced that the dead languages were dead and had been dead for a long time. That he had never derived any benefit from them, and that he would not know them if he met them in the street. All of which may have been true without impairing the wisdom and value of the committee's recommendation. But in his mind it settled the matter conclusively and at once against the report. Another participant in the discussion was one who could see no reason for expecting a lawyer to know anything about history, as he himself was unable to tell, as he said, "without severe deliberation," whether James the First followed the First Charles or the Second. He frankly confessed that he did not believe it made an iota of difference whether James died before Charles was born or was born after Charles died. Still another, again recurring to the Latin recommendation, effectually disposed of it by saying: Judge Beckley, of the Supreme Court of Georgia, "don't know any more about Latin than a pig, and yet he is acknowledged to be, perhaps, the greatest living judge in the South today." Having disposed of the Latin recommendation in the manner indicated, he next gave attention to the recommendation as to mathematics. Declaring his conviction that a knowledge of

mathematics had no bearing whatever on one's qualifications to practice law, he demonstrated the truth of his assertion by saying: "I bet there are not two lawyers present who can define that word 'quadratics.' I know I can't. Talk about requiring that examination, I bet there are not five lawyers present who can define what it means, or care what it means." But a member of the legal profession surely ought to be a man possessed of some general culture, and no one should come to the study of the law with faculties not trained by previous study.

In South Carolina, prior to 1879, a person was not required to pass any examination if only he had studied law for two years in a lawyer's office, or had been graduated from some reputable law school. But in that year an act was passed requiring an examination in all cases. In a report made to the Bar Association of that state by the Committee on Legal Education, in 1904, attention was called to the fact that no preliminary examination on literary subjects is required. The committee considered the absence of such a test as a defect in the law, but made no recommendation for its amendment. It did, however, venture to say that it felt "satisfied that, if the time be not now ripe, in the near future this requirement of preliminary education, before the student enters upon his law course, will be insisted upon, and such requirement enacted into law." If in a state which has produced a Calhoun, a Petigru and a Legaré the time is not yet ripe for insisting that men who come to its Bar shall have a reasonable education, the fact is indeed deplorable.

It is a rather remarkable fact that some of the most strenuous opposition in the South to any advance of standards, even when demanded by the Bar, has come from the law schools themselves. Thus, in North Carolina, when the Committee on Legal Education reported in favor of requiring all candidates for admission to the Bar to study law for two years the dean of one of the law schools opposed it very vigorously before the State Bar Association. He asserted that those

who had already been admitted into the temple were endeavoring to close up the entrance and make it "a little wicker gate through which the young men of North Carolina pass before they come out into the forum." After a discussion, which continued for two days, the Association adopted the recommendation, and the Supreme Court later made the change as requested.

In Georgia, the State Bar Association has taken action twice within the last six years in favor of changing the law of the state so as to take away the right of admission on the diploma of a law school, except in the case of schools having a two years' course. A bill to that effect was introduced into the legislature in 1904, and was defeated because of the opposition of a one year school which claimed that the time was not ripe for such a change.

The officials of law schools who oppose an advance in the standards governing admission to the Bar prejudice the interests of their own schools. Experience has shown that an effect of increased admission requirements is to diminish the number of students studying in offices and to increase proportionately the number who resort to the schools. The reason why there are comparatively few students in Southern law schools is that admission to the Bar in the Southern states is so easy a matter that the young men entering the profession think it unnecessary to avail themselves of the opportunities which the schools afford. When the Bar examinations are made severe, and candidates are required to study for a period of two or three years, the Southern law schools will not want for students and the necessary income for the payment of salaries will be forthcoming.

Before concluding this address, I desire to call attention to the matter of the law degrees. The old Litchfield Law School, the first to be established in the United States and which was founded in 1784, never conferred degrees. Neither did the Northampton School, which was opened in 1823. These schools were not incorporated, and consequently had no

power to give degrees. The degree of bachelor of laws was conferred for the first time, in the United States, in 1820, when Harvard University bestowed it upon six graduates. The Yale Law School, which dates from 1824, and next to Harvard, is the oldest of the existing law schools in this country, did not confer the degree until 1843. The law school of the University of Virginia, which came next, being established in 1826, began conferring law degrees in 1840. The original policy of that university was adverse to the entire degree system, and it was not until 1848 that it consented to confer the bachelor of arts degree.

The degree conferred by most law schools in this country is that of LL. B., although some few schools confer the degree of B. L.

In Scotland, a distinction is made between these degrees. The LL. B. degree was in that country originally created by the university commissioners, appointed under the Universities Act of 1858. The ordinance of the commissioners establishing the degree was passed in 1863, and the degree was first conferred in 1864. The B. L. degree was instituted in 1874. In that country the LL. B. degree is essentially an academic and scientific distinction. It implies a considerable amount of general culture, because no one is eligible as a candidate for the degree unless he holds the degree of master of arts (or its equivalent) of a recognized university. It entails a course of study and examinations in a wide range of legal subjects, which includes several subjects not ordinarily required for professional purposes, such as jurisprudence, international law and constitutional history. In contrast with the LL. B. degree, the B. L. degree is regarded as a distinctly professional degree and one standing on a lower level. It was designed for those students who have not much time for general education or for the study of the scientific branches of the law. The intention regarding that degree is to restrict it to those whose aim in attending law classes is distinctly practical. Candidates for this degree need not be

graduates in arts, but have only to satisfy some very moderate requirements as to general knowledge and to pass an examination in legal subjects, which is almost exclusively restricted to subjects of a purely practical and professional nature.

In England, the law degree given at Oxford is that of B. C. L., while at Cambridge it is LL. B. Before the Reformation degrees were given at Oxford and Cambridge *in jure civili, canonico* or *utroque*. When the universities discontinued the teaching of canon law the law degrees were *in jure civili* only. The abbreviations LL. B. and LL. D. (*legum baccalaureus, legum doctor*) are said to have come into use in England sometime in the seventeenth century and they ultimately prevailed at Cambridge, but not at Oxford. But even at Cambridge the full official style was *in jure civile* down to 1858. But in his Cambridge legal studies (p. 61) Mr. Clark cites the statutes of Edward VI, 1549, in which it was provided that the *studiosus legum* is to read the *Institutiones* privately for a year, then to attend the lectures of the *publicus juris prælector* for five years and to keep certain exercises before becoming *baccalaureus juris*. The *legum baccalaureus* is to attend a further course of three years and after more exercises to be chosen *doctor legum*. The *doctor legum* is, after his doctorate, to apply himself to the *leges Angliæ*.

Only a few years ago the whole country was scandalized by the sale of degrees by a man called Farr, who operated under a charter procured under the laws of Tennessee for a National College of Law. This notorious individual granted degrees for twenty-five dollars to those who were willing to pay for them. His operations were not confined to Tennessee, but he flooded the country with letters proposing to confer the honorary degree of doctor of laws for "the incidental fee of ten dollars." The parties addressed were requested to forward the fee and answer certain ridiculous questions of which the following are illustrations:

"Are you married or single?"

"Do you believe in the coeducation of the sexes?"

"Do you take daily exercise?"

"What is your political belief in national affairs?"

After he had been engaged in this business for several years and been exposed in the newspapers, the Tennessee Bar Association denounced him as "an ignorant tyro, charlatan and fakir," and pronounced his college of law as "an arrant fraud and humbug."

At length proceedings were commenced upon the relation of the Bar Association of the state, and the charter of "The National College of Law" was forfeited. Thereupon, for a time, he continued his nefarious work under the name of "The Nashville College of Law" and "The Nashville College," for he had three charters from the state. His operations were finally brought to an end by indictment and conviction in the United States Circuit Court for the Middle District of Tennessee. He was indicted for making a fraudulent use of the mails and, upon conviction, was sentenced to four months in jail and to pay a fine of five hundred dollars and costs. The sentence was suspended until the further order of the court, upon the condition that the man pay into court twenty-five dollars and file an affidavit showing his inability to pay the fine and setting forth the fact that he would never at any time again engage in any such educational scheme. This he promptly did, and he has ever since been in retirement.

In 1897 an exposure was made of the operations of "The National University of Chicago." This institution existed only on paper, and for a money consideration it scattered its degrees not only over the United States, but extended the scandalous traffic to England, Germany and India. Its conduct was denounced in the British Parliament, and the board of administration of Oxford University called public attention to its misdemeanors. The papers of Germany discussed the matter under the head of "American Diploma Swindlers."

American degrees have been brought into such disrepute in Germany that when Andrew D. White was ambassador of the

United States at Berlin they were made a feature of a comedy which he witnessed at the Royal Theater in that city.

The difficulty is that in the United States there is no supervision over the degree-conferring power. General laws exist in almost all our states which permit even the most irresponsible persons to incorporate and confer degrees. An extreme instance of the extent to which the abuse has been carried is shown by a statement made upon reliable authority that in "the good old reconstruction days" of Louisiana a few men organized themselves into a board of trustees of a university in that state, and met and elected officers. At this the first and only meeting the board ever held the secretary moved that the degree of LL. D. be conferred upon the president. This was carried, and then the vice president moved that the same degree be conferred upon the secretary. This was likewise done, and before the meeting adjourned the degree had been conferred upon each member of the board. An adjournment followed and the trustees never reassembled.

Legislation is necessary, not merely as a protection against palpable fraud, but as against institutions with a real faculty and curriculum of study, but with such low standards of admission and graduation that their degrees do not represent those attainments in learning which justify the honors conferred. In Europe state supervision is provided, but in this country there is little or no check on the abuse of the degree-conferring power.

A degree has a legal sanction and authority. According to the courts the power to confer it is derived from the legislature. (5 Wendell 211-217; 3 Wharton 445; 62 Vermont 373.) Degrees "confer honor, influence and respectability to a certain extent." A degree in law, or medicine, or dentistry, or pharmacy is, in some states, "a valuable property right of great pecuniary value." To confer degrees upon the illiterate and unworthy is to destroy their value and bring reproach upon the whole degree system. The abuse of this degree-conferring power has been likened by the courts to the witty French



minister who threatened to create so many dukes that it would be no honor to be one, and a burning disgrace not to be one.

It is full time for this Association of American Law Schools and for the American Bar Association also, to go on record on this important subject and initiate a movement to secure, so far as may be possible in all the states, a uniform law for the protection of the law degrees. The right to confer the LL. B. degree should be prohibited to schools which do not require a high school education for admission and a three years' course of law study for graduation. Other schools should have authority to grant simply the degree of B. L., or perhaps the right should be restricted to the two year schools. The right to confer the degree of L. M. should be restricted to those schools which have the right to confer the degree of LL. B., and which require an additional year's work done in residence. The degree of LL. D. should be made by law a purely honorary degree to be conferred simply *causa honoris*. The degree of J. D. should only be conferred by schools having the right to grant the degree of LL. B., and should be bestowed only upon those who have obtained a degree in arts or science. Recommendations to this effect will go to the Bar Association on Thursday, from the Committee on Legal Education. It is to be hoped that that Association and this Association will co-operate in the accomplishment of this great reform.

It is impossible longer to view with complacency the conferring of the LL. B. degree for one year, or even two years of law study. Now that there are sixty-four law schools in this country which grant it only to those who have studied for three years, it is not less disturbing to find schools conferring the master's degree in law at the end of a second or third year.

## THE OPPORTUNITIES AND RESPONSIBILITIES OF AMERICAN LAW SCHOOLS.

BY

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With two bodies dealing in general with the subject of legal education, the Section of Legal Education and this Association, meeting annually, and with occasionally a third, the Conference of State Boards of Law Examiners, each endeavoring to present papers and arouse discussion, it is obvious that the number of new questions which anyone may hope to suggest is necessarily small. Most of the important questions have already been discussed, many of them more than once, and anything which is now presented is likely to smack of the truism or the platitude.

The very remarkable increase, however, both in the number of American law schools and in their attendance, suggests some questions concerning their influence upon American law and their responsibility for its development which seem worthy of consideration.

In a government like our own, a government "of laws and not of men," the question of the influences which have the most to do with the actual growth and development of the law cannot fail to be of importance.

One does not need in such a presence as this to call attention to the pre-eminent part which the legal profession takes in the making of our laws, whether in the form of constitution, statute or judicial decision. It is doubtless true that in every constitutional convention that has ever sat the most influential members, if not a clear majority, have been lawyers. In every legislature, both state and national, the same condition exists. While in respect of the law evolved by judicial decisions, which yet remains the largest and most vital depart-

ment of our law, the legal profession holds undisputed sway. The judges who decide the causes, the advocates who argue them, all are lawyers coming from a common source.

If we assume that in these various functions of law making, constitutional, legislative and judicial, the participants are actuated by some conscious motive, that they are aiming to create good government, enact wise provisions and enforce justice among men, and then consider the question of the ideals toward which they aim, the standards of wisdom and fitness which they will seek to establish, the sentiments of justice by which they will be governed, it will be evident that the forces which play the most conspicuous part in the formation of these ideals, in the establishment of these standards and the arousing of these sentiments, must be worthy of attention. The influences which mould the lawyer are among the most potent of those which shape the welfare of the state.

In the making of the lawyer the law schools of the past have certainly taken a most important part. To estimate properly their effect we must take into consideration not only those who came directly within their walls as students, but also the vast numbers who indirectly fell beneath their influence.

Large as was the number, for example, of those who listened to regular instruction in the class room at Harvard Law School in the days of Story, Greenleaf, Parsons and Washburn, they were few compared with those whose legal learning was obtained by the constant study of those great books, the classics of our American law, which these teachers produced, a situation wholly without a parallel in any other school or any other time. Great as was the army of young men who yearly came to listen to the lectures of Judge Cooley and his associates, it was small compared with the number of those who in every part of the land were poring over his published books. Great as was the fame and influence of Judge Story and Judge Cooley and Chancellor Kent as judges, everyone will agree with me in saying that their reputation rests vastly more upon the books which they wrote as law teachers than upon the

opinions they pronounced as judges. No judge who has lived in this country, or any other, not even Marshall, has had so large and so direct an influence upon the immediate training of the Bar as these men have had as teachers and writers. Professor Gould and Professor Pomeroy are entitled to be included with them.

In this respect, that is, of teaching through the general treatises issued from them, the influence of the law schools has almost entirely passed away. No such work is now being done in them, nor is there any indication that it is likely to be revived. Methods and conditions have changed, and new times and new manners have taken their places.

Great, however, as was thus the influence of the law school of the past, the law school of the future is destined to have a greater, though operating in a different way.

Everywhere, as the result of a variety of causes—the increase in number of the schools, the improvement in their equipment and methods of teaching, the new requirements for admission to the Bar demanding better preparation—the proportion of the young men coming to the Bar, who are getting their preparation in the law schools, is constantly increasing and will continue to grow.

When I was admitted to the Bar, now more than a quarter of a century ago, and the older members here will tell the same story, there were more young men studying law in the law offices than in the law schools. The time has now come when a law student in a busy office is an anachronism, and he will soon be a curiosity. The direct and immediate influence of the law schools was never so great as it is now.

The indirect influence of the law school of the present is also marked, especially in its effect upon the standards prevailing at the Bar examinations. In the first place, the changes in the law, which are so largely doing away with the old time local examination by ephemeral committees and substituting state boards with their improved methods, have quite largely been the result of the influences and demands of the law

schools. And in the second place the standards and methods prevailing in the law schools have had a marked effect upon the standards set by the state boards. In many instances, and in a growing degree, the members of these boards are law school graduates (in some cases law school teachers) in sympathy with the aims and standards of the schools, and they thereby become excellent advocates of progress and reform. Both directly and indirectly, therefore, the law school has come to be the chief factor in the education of the Bar.

What does all this mean for the future of the American law school? In the first-place, it means an enlarged demand for men and equipment, and for better men and better equipment. If the work is to be properly done, there must be trained men to do it; they must be supplied in such numbers that they can adequately perform it; they must be given such compensation and such opportunities that men of the best ability can be induced to devote themselves unreservedly to the work of teaching, and there must be such equipment of buildings and libraries that the facilities will be found at hand to do the work properly.

It means, in the second place, an enormous opportunity. Contemplate for a moment what it means to be able to train the men who directly and indirectly are to exercise the most potent influence over the growth and development of our law. We have in this country today, I suppose, considerably over one hundred law schools with something like fourteen thousand students.<sup>1</sup> Think what it would mean if the thirty-five hundred or so of young men who now go out yearly from these law schools to every town and city in the land could go with not only the best possible training in the law, but with the highest possible ideals as to its duties and responsibilities and the strongest possible ambition for its improvement and advancement. I wonder if we fully realize what this practical monopoly of the law teaching means? And especially what it means to this Association? It means, of course, that this

<sup>1</sup> See statistics given by Professor Huffcut, 25 Rep. Am. Bar Assn. 530.

Association, made up of the most important and influential law schools in the country, has substantial control of the business. It means that, if this Association improves its opportunity and does its duty, whatever is *best* in standards of admission, methods of instruction, order and contents of curricula may be established. What has already been accomplished in the way of requiring a three year course is a fair example of the possibilities.

It is, of course, true that the law faculties do not hold the purse. But it is also true that, practically everywhere, the managing boards or bodies of our law schools have been quick to respond to every well considered proposal for the raising of standards and improvement in the quality of the work. In some cases they have actually taken the initiative and insisted that dormant faculties should awake and move.

It means also an enormous responsibility. Responsibility is usually commensurate with opportunity, and this case is no exception. If the law schools are to train the lawyers of the future, they must themselves be equal to the task. They must be filled with legal learning, and the capacity and fitness to impart it.

Our law schools must, of course, be first and always the places wherein the best legal teaching is to be found—teaching that shall be serious, thorough and effective. Whatever is best in methods must here be found, though methods are only the means and not the end. As “life is more than meat and the body more than raiment,” so the end to be attained is here of more importance than the method by which we reach it. The end is to arouse the student’s interest and enthusiasm, to teach him how to think and how to reason in a legal way, to ground him in the great principles of the law, to teach him how to use the tools of his profession and to inspire him with a love of justice and a sense of honor that will make him a worthy member of a learned and honorable profession.

I think we are inclined in these days to say too much about methods and to convey the impression that some of us think

we have a sort of patent upon the only right way, and that if the student will only pursue our method he will have a guaranty of success. I have no hesitation in saying that after a considerable experience with many methods I believe that, under the right circumstances and conditions, the careful study of decided cases is best calculated to attain the ends we seek. But I realize fully that men can be well trained by other methods, and I firmly believe that the man is more than the method. Professor Dwight was a great teacher under one method, Professor Langdell under another and Judge Cooley under still another. Give us, then, *men* and *teachers* in our law schools and the methods will take care of themselves.

I think, moreover, that we shall make a mistake if we put into our law schools too many men as teachers who have had no practical experience at the Bar. It is, of course, true that the mere fact that one is a good or even a great lawyer or judge gives no assurance that he will be a good teacher, but on the other hand I believe that, in the main, no man can be really the best teacher of the law who has had no experience in practice. Law is so distinctively a practical science, it exists so necessarily for purely practical ends, so many elements enter into its operation and effect beside pure theory or clear logic, that some experience with its practical side seems to me to be essential not only to its fullest comprehension, but also to the most sympathetic and helpful attitude toward the needs and problems of those who are to practice it. Law, as it looks to the theorist in his study and law as it looks to the lawyer in consultation or the court room, are often radically different things. One of the greatest advantages of the so-called case system is, in my judgment, to be found here, that student and teacher alike are facing practical problems so far as one who lives simply in the experience of others can do so. It is, moreover, essential that the law schools shall keep in touch with the Bar. They must command its respect, inspire its confidence and receive its support. An occasional infusion of new blood, drawn from the active ranks of the profession, not

only helps to accomplish this, but also serves to prevent a whole faculty from becoming too doctrinaire in its habits and tendencies of thought.

But there is another side to the law school than its purely teaching activity.

The law schools of this country must be the places wherein the most original and most scholarly legal investigation is carried on. The law teacher has, upon the whole, the best opportunity for this work. The practicing lawyer has usually neither the time nor the facilities for making an exhaustive study of his case. His view is a partisan one and his object is to succeed in one side of a particular cause. The judge upon the Bench has the advantage, usually, of a wide experience, and the opportunity to hear the case discussed by able counsel. He enjoys also the very important advantage of being able to see how the rule which he adopts will operate when applied to the actual affairs of men, and how it will fit into the general system of the law. As a rule, however, he does not have time enough for the most thorough investigation of the matter, and especially does he lack the time or opportunity to study the whole of the field in which the particular question lies. He gets an intensive view of a small area rather than a comprehensive view of the whole field.

The law teacher, on the other hand, has, in the better schools at any rate, time to make himself a master of some particular subject, he has unsurpassed library facilities, he has the advantage of consultation with his colleagues who are also experts in cognate fields and he has the opportunity of hearing the discussions and answering the objections of successive classes of bright students whose arguments in many cases, as those who hear me will bear witness, would do credit to the older members of the Bar. He misses the keen interest of the advocate, he does not see the situation of the client, and, unlike the judge, he does not see so clearly how the rules which he evolves will operate in their actual application to a given controversy. But, on the whole, as has been said, he is



doubtless in the best situation to make a leisurely, careful, exhaustive study of legal questions.

With the enormous growth in bulk of our law, with the increasing output of reports, with the constantly increasing number of new questions caused by the wonderful changes in our social and economic conditions, there is a constant and increasing demand that some competent persons shall sift and analyze and re-state the principles of law which are being applied. Nowhere else can this be so intelligently and thoroughly done as by the law teachers of the country. Into the law schools, as into great laboratories, all these new ideas in law should come to be tested, compared, analyzed and reported upon. From these laboratories there should be constantly coming forth the reports of the tests and experiments which have been made upon them. Nothing can be more valuable than critical and exhaustive articles, monographs and the like, upon such special questions in the law, giving the result of intelligent research and competent analysis.

The day of the great treatises upon the larger branches of the law is passing by. The amount of time and labor required for their adequate production has become so great that few competent persons can be induced to undertake them. A thoroughly trained worker, moreover, toiling single-handed cannot compete with the machine-made books which now so much abound. Occasionally there will be a great work, the *magnum opus* of a lifetime, like Professor Wigmore's recent treatise upon evidence, but the best work of the future is likely to be found in the articles and monographs of the experts. Already a good beginning has been made in this direction. The better law journals of the country, and especially those connected with the great law schools, are presenting an increasing number of thoughtful, exhaustive studies of important questions.

A great deal remains to be done in the way of the development of legal history. Much very noteworthy work has already been done in American law schools, but much more

remains to be done. Nowhere is there likely to be found either the temper, the time or the facilities for this important work, and the law schools of the country, in my judgment, will fail of their high duty if they do not undertake it.

From the law schools, too, must come the development of the scientific side of our law. Nothing in my judgment can be of greater interest and importance than the careful study into the nature of law, the analysis of legal ideas and the correlation and comparison of legal rules. If our law is ever to be more than an endless series of isolated instances, a chaos tempered by a digest, this work of analysis and synthesis must be forever going on. In this field the English teachers of law have thus far held almost undisputed possession, and their books are among the treasures of our legal literature. The field, however, is a great one, and from our law schools must come the American Austin, Holland and Salmond.

Opportunities to serve the state ought also to come to the law teacher in the way of suggesting needed changes or new enactments in legislation, drafting bills, serving upon commissions to revise the laws and the like. If our law is ever to be successfully codified, either in whole or in part, the work cannot fall into more competent or more willing hands than those of our law teachers. Already signal illustrations of this are found in the work of Professor Williston, and more is fortunately in sight.

Opportunity to serve as occasional legal adviser to state officers or public bodies should also come to the law teacher, especially in state universities. What could be more useful or more fitting than that in our law schools should be found a body of men, competent, trained, impartial and honorable, ready and willing to give their aid and counsel in the formation and settlement of public questions having a legal aspect? Instances are numerous in recent years where other faculties of the universities have rendered very distinguished and valuable service to the state—a conspicuous one has just occurred in Michigan. Why should not our law faculties do the same?

But in addition to the purely legal side of the question, there is another aspect of great significance and importance upon which I wish to touch. I mean the opportunity and responsibility of our law schools in developing the ethical side of the law and the profession.

It has been said that a lawyer has no more need to concern himself with moral questions than any other man ; and sharp distinctions are insisted upon in many quarters between morality and law. I do not admit the first proposition, though it is entirely unnecessary to discuss it now. There are, of course, a great many rules of law which involve no moral question. Whether a seal shall be of wax or paper or a mere scrawl of the pen ; whether one shall turn to the right, as with us, or to the left, as in England, upon meeting on the highway ; whether the time for giving notice of dishonor of negotiable paper shall be twenty-four hours or forty-eight, all these and countless others involve no moral issue. We need some rule in order to get on, and any one of several will often do so long as we all know what it is and abide by it.

But on the other hand there are many questions, and they are the questions which most directly and vitally concern our lives and welfare, which do involve a moral element. All the questions of fraud, of good faith, of *bona fide* holder, of fiduciary relationship, of trusts, of "unfair competition," a large portion of the ordinary jurisdiction of courts of equity, many questions of torts and negligence and contracts, have a moral foundation and play a very important part not only in determining actual controversies, but also in forming the general moral standards of the community. Law is the official moral code of the community. It is the organized and manifest expression of the public sense of justice. It endeavors to establish and enforce what is believed to be the highest practical, workable, livable, ethical code.

If it be true, as I believe, that the present is seeing and that the future will witness in a still more marked degree the disappearance of many of the old sanctions, the breaking up

of many of the old codes of belief, the shifting of much of the old emphasis; if it be true, as is often asserted, that the church is losing its hold upon men and that new forces are not arising to take its place, then the ethical code embodied in the law is likely to become more and more important. Here is something having authority. Here are definite and ascertainable sanctions. Here is a code which men must recognize and obey. Other standards may decay; this is living, active and potent. As others lose their influence and importance, this is certain to grow in significance and interest. Here is the standard to which men must not only conform their conduct, but by which they may shape their ideals. It is of supreme importance that it be made as perfect as is possible.

Moreover, as society gets more and more complex, as population gets denser, as the competitions of life become fiercer, as the schemes, of which the air is full, for the improvement of social and economic conditions are urged for legal enforcement, new questions and new problems will constantly present themselves, and the imperative necessity for the formation and maintenance of sound and sane views by the Bench and Bar upon all of these moral and economic questions is certain to become more and more obvious. Where are these views to be developed and worked out? Nowhere else than in the American law schools.

I, of course, do not mean to say that the law school shall be turned into a Sunday school, but I do mean to say that in the law school class rooms these lego-ethical problems must be discussed and worked out, and the plastic minds of the youth who frequent these schools must be moulded to just and equitable convictions, and through them, as they join the active ranks of the Bench and Bar, must flow a constant stream of inspiration and enlightenment to keep pure and fresh the fountains of our law.

If it be objected that this is matter for a college course in ethics and not for a law school class room, I reply, first, that, even were the subject matter the same, all students do not get

such work in college and that the college teacher has other ends in view; but, secondly and chiefly, that the objection shows an entire misapprehension of the point I seek to make. I do not mean that we shall merely teach ethics, but I do insist that ethical considerations are so involved in many of our most important and most pressing legal problems that we cannot separate them if we would, and that our duty is so to frame our teaching as not only to make our actual law conform as nearly as possible to right ethical standards, but also to enable it to guide the people by its precepts as well as to deter them by its penalties.

The ethics of the profession must also look to the law school for their inspiration and support. Surely no duty of the law school can be greater than this. It has within its halls the Bench and Bar of the future. They are there at their most plastic and impressionable age. At no period in their lives can right standards and right ideals be more certainly created. During this period must be sown the seeds which shall bear a harvest in after life. The reputation of the school may also be made to serve a useful purpose in this particular. To a pride in their profession and its requirements there may be added a pride in their law school connection which shall be an anchor when temptation overtakes them.

Never was there greater need of right standards in this matter than at the present moment. The whole character of the lawyer's relations and functions seems in danger of undergoing change. The influence, if not the taint, of commercialism is over the profession. To the time-worn popular complaints of the ethics of the legal profession, that a lawyer will espouse either side of any cause for money and sell his talent to the highest bidder, there is added in these days the criticism by men in high places that the best effort and ability of the profession are constantly retained by the greatest enemies of our people, the huge, soulless, monopolistic combinations of capital and labor, standing to exact toll at every gateway of

commerce, at every vantage ground of opportunity, at every storehouse of natural wealth which should be common.

I do not undertake to say how much of this is true, how much mere slander and how much based upon a misapprehension of the real situation. It is evident enough that there is a danger here, and, in my judgment, the law schools have not done their duty if they do not instill in the minds of their students such notions of the dignity of their calling, of their relations to the law and to the public, and of their duty to truth and honor and right conduct as will enable them to withstand the temptation, if it does come, to prostitute their talents to ignoble ends and to sell their birthright for a mess of pottage.

These, then, as I have briefly outlined them, seem to me to be the opportunities and responsibilities of the American law school. The realization of them would seem to be ample reward for the best effort of any association of men. If they can be actually realized, then, in my judgment, the practice of the law will fulfill its appropriate mission and the profession of law teaching will attain its proper dignity and importance.

**REPORT**  
OF THE  
COMMITTEE ON THE STUDY OF LEGAL HISTORY.<sup>1</sup>

Your Committee on the Study of Legal History, including a bibliography of essays on legal history and the publication of a select list, beg to report the following resolutions, with the recommendation that this Association do now approve them :

*Resolved*, 1. That the Association of American Law Schools approves and recommends the publication, by reprinting, of a select list of essays and chapters on the various topics of Anglo-American legal history; the selections to be not less than sixty and not more than one hundred in number, and the series to form not less than three and not more than five volumes of six hundred pages each; the volumes to be published at the rate of two in the first year, and thereafter one or more in each ensuing year as may be determined by a committee of the Association; the series to be entitled "Select Essays in Anglo-American Legal History."

2. That this publication be made without pecuniary responsibility to the Association and at the entire responsibility and profit of such publisher as may be authorized thereto by a committee of the Association; but that the Association sanction the work as a publication under its auspices and by its direction, and that the members of the Association recommend to the respective faculties of law to purchase and use as many copies of the series as may be suitable for carrying on the work of the schools in the study of legal history in the various branches of the law.

3. That a committee of three be appointed by the President (a) to make an agreement with a publisher for the above purpose; (b) to make the selections for publication as provided in paragraph 1, *supra*, (c) to secure by correspondence the written consent of the authors or other copyright holders for the reprinting of the various selections; (d) to edit the

<sup>1</sup>Appointed August 22, 1905. See A. B. A. Report for 1905, pages 679 and 703.

selections for publication; and (e) before making the final selection, to obtain from the respective faculties a recommendation of the best sixty titles, to guide the committee in its selection.

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Your committee will now (a) state the reasons for the above recommendations, and (b) explain the mode of preparation of the accompanying preliminary list.

#### A. REASONS FOR THE RECOMMENDATIONS.

The prime reasons are that the study of the history of the various branches of law is now much obstructed by the virtual inaccessibility of a great amount of important material, which exists in print, but is through several circumstances practically going to waste. The chief circumstance is that it consists of articles scattered through serial journals of from twenty to forty volumes of which only one or two sets are usually kept in any library. The result is that when a class of fifty or a hundred students is set to read an article of prime value in some subject, one of two things happens: either the bulk of the class become discouraged at finding the volume already taken out by some enterprising student; or, if they persist, and the bulk of the class manage to read the article, it is worn out and becomes illegible in a year or two, and is thereby useless unless the set to which it belongs is entirely or partly replaced at great expense. Between these two dilemmas, very little of such reading comes actually to be done. In short, what is needed is a handy and inexpensive series of selected essays, which shall do for this part of legal study exactly what the case book has done for the study of cases. The same exigency leads to the same remedy. Almost the same obstacles prevent the use of single chapters of history in special treatises. A further reason for reprinting a select series of essays is that the easy access of such a set will stimulate instructors to send their students oftener to the parts which are important to their respective subjects. If each school would have from two to



ten copies ready on the library shelves, the amount of voluntary reading by the students, when reference was made by the instructors, would be many times what it now is. We add that these volumes would also find a good demand in the private libraries of studious practitioners, who do not possess sets of all the journals, and do not know where to dig out the useful and interesting articles from the back volumes on the Bar Association library shelves. From the publisher's point of view, this will greatly encourage the prospect of marketing the series; from our point of view, it is a further reason for thus helping to stimulate the wide study of legal history.

We therefore earnestly recommend that the Association sanction this enterprise by the above resolutions; and we can state that with this sanction a publisher will easily be found.

#### B. MODE OF PREPARATION OF THE PRELIMINARY LIST.

In preparing the list, the materials of search were assigned by the committee into three parts. Jones's Index to Legal Periodicals was equally divided; and the catalogue of a large law library was equally divided. Each member then prepared a list of his part, by perusing the titles of articles in Jones's Index (verifying when needed), and by examining the treatises on the library shelves. Then two members, taking the ten leading law reviews, went through them volume by volume to date, thus covering that part of the ground a second time. Then one member looked through the treatises on the shelves of a library of fifty thousand volumes, thus covering that part of the ground a second time. The resulting three lists were then consolidated by the Chairman of the committee, and reduced to one hundred and fifty titles. These titles were then roughly classified, and appear as a preliminary list, appended hereto. From this a further selection will have to be made, reducing the total to not less than sixty, and not more than one hundred, averaging thirty pages each.

This list, therefore, represents the following features :

(1.) It is based on a survey of practically all the printed material.

(2.) It includes only the modern scholarly researches of readable interest and of general reference value to students; though we must here apologize to those few scholars whose articles have undoubtedly lurked somewhere unnoticed in the mass of material examined.

(3.) It does not attempt (with rare exceptions) to include anything from the few professed treatises on the history of the law (such as Pollock & Maitland, Bigelow on Procedure, Digby on Real Property); the reasons being, first, that several copies of these can easily be provided, and secondly, that extracts of single chapters would usually be of no service from works which treat the subject in such detail.

(4.) It includes essays on almost all the main subjects of law, from corporations to wills, and covers also the general field of sources of the law, law reform in the nineteenth century, and colonial law.

(5.) It forms substantially a supplement to Pollock & Maitland's "History of the English Law Before the Time of Edward I." As American scholars are now aware, no comprehensive and final work on the intervening period to 1900 can be attempted or expected until the year books are re-edited, which will take another generation. In the meanwhile, this series will collate in serviceable form the most useful and essential parts of our knowledge now extant. It will serve to keep the rising generation familiar with what is thus far attained. It is because this part of our history is likely otherwise to be buried from general professional knowledge that we earnestly desire to re-present it to the profession in this accessible form.

JOHN H. WIGMORE,  
*Chairman,*  
WILLIAM E. MIKELL.

PRELIMINARY LIST OF USEFUL ARTICLES AND CHAPTERS  
ON TOPICS OF ANGLO-AMERICAN LEGAL HISTORY.

SOURCES OF THE LAW.

YEAR.	AUTHOR.	TITLE.	CITATION.
1888.	H. Brunner.	Sources of the Law of England.	pp. 1-47 (tr. Hastie).
1897.	G. C. Lee.	The Early Germanic Codes.	9 Green Bag 428-432.
1892.	F. W. Maitland.	Quadripartitus.	8 L. Q. R. 73-75.
1900.	L. O. Pike.	The Manuscripts of the Year Books.	12 Green Bag 533-541.
1901.	C. C. Soule.	Year Book Bibliography.	14 H. L. R. 557-587.
	T. Twiss.	Ricardus Anglicus.	20 Law Mag. & Rev. 1.
1888.	P. Vinogradoff.	Bracton's Notebook.	4 L. Q. R. 436-441.

GENERAL SURVEYS OF HISTORICAL PERIODS.

1901.	J. Bryce.	Studies in History and Jurisprudence.	Ch. II (pp. 72-123) The Extension of Roman & English Law throughout the World. Ch. XV (pp. 744-782) The History of Legal Development at Rome and in England.
1903.	W. W. Howe.	Roman and Civil Law in America.	16 H. L. R. 342-352.
1898.	F. W. Maitland.	A Prologue to a History of English Law.	14 L. Q. R. 13-23.
1901.	F. W. Maitland.	English Law and the Renaissance.	Pamphlet lecture.
1885.	T. E. Scrutton.	Roman Law in Bracton.	1 L. Q. R. 425-441.
1896.	J. E. R. Stephens.	A Sketch of the Civil and Canon Laws of England.	35 Am. L. Reg. N. S. 141-160.

REPORT OF COMMITTEE ON  
COURTS AND JURISDICTIONS.

YEAR.	AUTHOR.	TITLE.	CITATION.
1889.	G. H. Blakesley.	Manorial Jurisdiction.	5 L. Q. R. 113-131.
1899.	A. T. Carter.	History of English Courts to Edward I.	Chs. I-VII, pp. 1- 51. English Legal History.
1902.	S. D. Cole.	English Borough Courts.	18 L. Q. R. 376-387.
1902.	W. S. Holdsworth.	History of the Juris- diction of Martial Law.	18 L. Q. R. 117-132.
1894.	J. D. Lindsay.	The Court of Star Chamber.	6 Green Bag 114- 118, 163-166, 215- 218, 270-273, 331- 335.
1885.	F. Pollock.	The King's Peace.	1 L. Q. R. 37-50.
1900.	F. Pollock.	The King's Peace in the Middle Ages.	13 H. L. R. 177-189.
1901.	V. V. Veeder.	A Century of Eng- lish Judicature (History of all the Courts).	13 Green Bag 23- 37, 75-87, 131- 138, 303-312, 355- 366, 391-395, 435- 446, 479-485, 527- 534, 573-580. 14 id. 27-34, 71-75.
1877.	Emory Washburn.	History of the Court of Star Chamber.	12 Am. L. Rev. 21-38.

THE BAR AND LEGAL EDUCATION.

1894.	J. F. Dillon.	History of Inns of Court and West- minster Hall.	Laws and Jurispru- dence of England and America, III (part) Ch. II, III (part) pp. 34-82, 95-107, 108-115.
1894.	D. W. Douthwaite.	Temple Students and Temple Studies.	6 Green Bag 411- 419, 456-465.
	H. Hall.	The Official. The Lawyer.	Society in the Eliza- bethan Age; Chs. IX, X.
1903.	J. P. Hill.	Education in the Inns of Court.	15 Green Bag 114- 124.

## THE BAR AND LEGAL EDUCATION.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1897.	James Kent.	An Unpublished Letter of James Kent.	9 Green Bag 206-211.
1856.	P. A. Smith.	Ancient Legal Education in the Inns of Court.	1 Juridic Soc. Pap. 385-398.

## CIVIL PROCEDURE, WRITS, REMEDIES, TRIALS, ETC.

1848.	F. Dwarria.	History of the Mode of enacting a Statute in Parliament.	Treatise on Statutes, Vol. I, Ch. 1, pp. 28-40, without notes.
1902.	Ch. E. Gross.	Modes of Trial in Medieval Boroughs of England.	15 H. L. R. 691-706.
1890.	H. Hall.	The Methods of the King's Courts.	Court Life under the Plantagenets, Chs. VI, VII, pp. 81-113.
1897.	C. M. Hepburn.	The Historical Development of Code Pleading in America and England.	Part of Chs. I-IV, pp. 24-90 (in all, about 50 pp.).
1894.	Wm. D. Lewis.	The Anglo-Saxon Lawsuit.	33 Am. L. Reg. N. S. 769-777.
1889.	F. W. Maitland.	History of Register of Original Writs.	3 H. L. R. 97-115, 167-179, 212-225.
1894.	L. O. Pike.	Action at Law under Edward III.	7 H. L. R. 266-280.
1896.	J. E. R. Stephens.	Growth of Trial by Jury in England.	10 H. L. R. 150-160.
1894.	Charles Sweet.	Choses in Action.	10 L. Q. R. 303-317.
1888.	T. Williams.	Real and Personal Actions in English Law.	4 L. Q. R. 394-408.

## EVIDENCE.

1898.	J. B. Thayer.	The Older Modes of Trial.	Treatise on Evidence, Ch. I, pp. 1-46.
1903.	T. R. White.	History of Oaths in Judicial Proceedings.	42 Amer. L. Reg. N. S. 373-444 (20 pp. only).

## EVIDENCE.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1904.	J. H. Wigmore.	General Survey of the History of the Rules of Evidence.	Treatise on Evidence, Ch. I, 8 (10 pp.).
1904.	J. H. Wigmore.	History of the Numerical System of Proof in English Law.	Treatise on Evidence, Chs. 69, 2032 (20 pp.).
1904.	J. H. Wigmore.	History of the Parole Evidence Rule.	Treatise on Evidence, Chs. 85, 2405, 2426, 2462 (30 pp.).

## CRIMINAL PROCEDURE.

1893.	W. S. Church.	History of the Writ of Habeas Corpus in England and the Colonies.	Habeas Corpus, 2d ed., Ch. I, 2-45, pp. 3-38.
1902.	E. Jenks.	History of the Habeas Corpus Writ.	18 L. Q. R. 64-77.
1881.	J. Kinghorn.	History of the Magistrate's Preliminary Investigation of Crime.	Law Mag. & Rev., 4th ser., 133-145.
	F. W. Maitland.	Early History of Malice Aforethought.	8 Law Mag. & Rev. 406.
	F. W. Maitland.	Criminal Liability of Hundred.	7 Law Mag. & Rev. 367.
1873.	L. O. Pike.	State of Criminal Procedure and Practices in 1200 and 1300.	History of Crime in England, Ch. II, pp. 112-144; Ch. IV, pp. 262-296.
1883.	J. F. Stephen.	History of Arrest and Police Methods from 1200 to 1800.	History of the Criminal Law, Ch. VII (part), pp. 184-200.
1883.	J. F. Stephen.	History of Trial Procedure in 1500 and 1600.	History of the Criminal Law, Ch. XI (part), pp. 324-358, 397-398, 416-417, 425-427.

## CRIMINAL PROCEDURE.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1883.	J. F. Stephen.	History of Magistrate's Inquiry, Committal, Bail and Grand Jury.	History of the Criminal Law, Ch. VII, Ch. VIII (part), pp. 215-239, 244-254.
1829.	Anon.	History of Justices of the Peace. Quarter Sessions.	Quarterly Jurist 401-415.

## PROPERTY (IN GENERAL).

1890.	J. B. Ames.	Disseisin of Chattels.	3 H. L. R. 23-40, 313-328, 337-346.
1885-6.	R. Campbell.	History of Land Tenure in Scotland and England.	1 L. Q. R. 175-188, 400-411; 2d ed. 166-176.
1890.	H. W. Elphinstone.	Alienation of Estates Tail.	6 L. Q. R. 280-288.
1890-2.	W. G. Hammond.	Short Studies in the Early Common Law: I, Married Women's Property. II, Rents-Charge.	2 Green Bag 257-261; 4 Green Bag 283-292.
1904-5.	H. D. Hazeltine.	Gage of Land in Medieval England.	17 H. L. R. 549-557; 18 H. L. R. 36-50.
1880.	M. Kovalevsky.	Early English Land Tenures.	4 L. Q. R. 266-275, 276-285.
1885.	F. W. Maitland.	The Seisin of Chattels.	1 L. Q. R. 324-341.
1886.	F. W. Maitland.	The Mystery of Seisin.	2 L. Q. R. 481-496.
1888.	F. W. Maitland.	The Beatitude of Seisin.	4 L. Q. R. 24-39, 286-299.
1889.	F. W. Maitland.	Possession for a Year and a Day.	5 L. Q. R. 253-264.
1887.	W. O. Morris.	History of the Land System of Ireland.	3 L. Q. R. 133-157.
1889.	L. O. Pike.	Feoffment and Liv- ery of Incorporeal Hereditaments.	5 L. Q. R. 29-43.

## PROPERTY (IN GENERAL).—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1887.	T. E. Scrutton.	The Origin of Rights of Common.	3 L. Q. R. 373-398.
1886.	A. G. Sedgwick & F. S. Wait.	History of the Action of Ejectment in England and the United States.	Trial of Title to Land, 2d ed., pp. 1-42.

## WILLS AND DESCENT.

1897.	M. M. Bigelow.	Rise of English Wills.	11 H. L. R. 69-79.
1895.	O. W. Holmes.	Executors.	9 H. L. R. 42-48.
1878.	C. S. Kenny.	History of Law of Primogeniture in England.	pp. 1-44.
1904.	C. E. Gross.	Medieval Law of Intestacy.	18 H. L. R. 120-131.
1905.	E. Maxey.	History of the Ecclesiastical Jurisdiction in England.	3 Mich. L. Rev. 360-363.
1885.	T. E. Scrutton.	Roman Law in the Ecclesiastical Courts.	Influence of Roman Law on the Law of England, Ch. XII, pp. 163-168.
1844.	J. Willard.	Origin of Cy Pres.	8 H. L. R. 69-92.

## MARRIAGE.

1901.	J. Bryoe.	Marriage and Divorce under Roman and English Law.	Studies in History and Jurisprudence, Ch. XVI, pp. 782-833, 856-860.
1887.	J. T. Hammick.	History of Formalities of Marriage Contract in England to 1836.	Marriage Law of England, Ch. I, pp. 1-16.

## EQUITY.

1891.	J. B. Ames.	Tyrrel's Case and Modern Trusts.	4 Green Bag 81-83.
1895.	J. B. Ames.	Equity Defenses and Specialty Contracts.	9 H. L. R. 49-59.



## EQUITY.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1896.	W. P. Baildon.	Early Chancery Jurisdiction and Procedure.	Select Cases in Chancery. Introd. pp. 12-29.
1885.	O. W. Holmes.	Early English Equity.	1 L. Q. R. 162-174.
1885.	L. O. Pike.	Common Law and Conscience in the Ancient Chancery Court.	1 L. Q. R. 443-454.
1905.	J. N. Pomeroy.	The Origin of Equity Jurisdiction.	Treatise on Equity Jurisprudence, Vol. I, 3d ed. 1-42 (41 pp.).

## CONTRACTS.

1889.	J. R. Ames.	History of Assumpsit.	2 H. L. R. 1-18, 53-69, 377-380.
1895.	J. B. Ames.	Parole Contracts Prior to Assumpsit.	8 H. L. R. 252-264.
1904-5.	C. D. Henning.	History of the Beneficiary Third Person's Right to Sue in Assumpsit.	43 Amer. L. R. N. S. 764-779. 44 Amer. L. R. N. S. 112-127.
1892.	E. Jenks.	Doctrine of Consideration.	Chs. III, IV, pp. 161-225 (Early History and Historical Summary).
1903.	Ch. Morse.	History of the Common Law Theory of Contract.	39 Canada L. J. 379-395.
1887.	J. W. Salmond.	History of Contract.	3 L. Q. R. 166-179.

## TORTS.

1898.	J. B. Ames.	History of Trover.	11 H. L. R. 277-289, 374-386.
1902.	F. Carr.	Early History of the Action for Defamation in the Spiritual, Common Law and Other Courts.	18 L. Q. R. 254-273, 388-399.

## TORTS.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1903.	V. V. Veeder.	History of the Law of Defamation.	3 Col. L. Rev. 546-573.
1894.	J. H. Wigmore.	History of Responsibility for Tortious Acts.	7 H. L. R. 315-337, 383-405, 441-465.
1887.	J. H. Wigmore.	History of the Boycott and other Unlawful Interference with Social Relations.	21 Amer. L. Rev. 509-532, 764-778.

## COMMERCIAL LAW.

(Including Insurance, Patents and Negotiable Instruments.)

1901.	S. Brodhurst.	Merchants of the Staple.	17 L. Q. R. 56.
1901.	A. T. Carter.	Early History of the Law Merchant.	17 L. Q. R. 232.
1890.	H. Hall.	The Guilds.	Court Life under the Plantagenets, Ch. III, pp. 39-46.
1893.	Edward Jenks.	Early History of Negotiable Instruments.	9 L. Q. R. 70-85.
1896-1900.	E. W. Hulme.	History of the Patent System in the 1500s.	12 L. Q. R. 145-154; 16 L. Q. R. 44-56.
1902.	E. W. Hulme.	History of Patent Law in 1600s and 1700s.	18 L. Q. R. 280-288.
1897.	J. A. Joyce.	History of the Different Kinds of Insurance.	J. A. Joyce on Insurance, Vol. I, Chs. II-VIII (23 pp.).
1876.	F. Martin.	History of Marine Insurance.	Chapters on "Steel-yard Merchants," pp. 1-16; "Lombard St.," pp. 17-32; "Early Marine Insurance and Companies," pp. 33-51, 86-103, 121, 144.

## COMMERCIAL LAW.—Continued.

(Including Insurance, Patents and Negotiable Instruments.)

YEAR.	AUTHOR.	TITLE.	CITATION.
1885.	T. E. Scrutton.	Roman Law in the Law Merchant and Law of Contracts.	Influence of Roman Law on the Law of England, Chs. XIV, XV, pp. 177-195.
1904.	W. R. Vance.	Historical Origin of Insurance.	Handbook of the Law of Insurance, Ch. 1, pp. 2-16.

## MARITIME LAW.

1889.	E. L. de Hart.	History of the Liability of Ship Owners at Common Law.	5 L. Q. R. 15-28.
1903.	J. L. Mears.	History of the Admiralty Jurisdiction.	Admiralty Jurisdiction and Practice, 3d ed., pp. 1-60 (25 pp., omitting notes), by E. S. Roscoe.
1896.	J. B. C. Stephen.	The History of the Water Carrier and His Responsibility.	12 L. Q. R. 116-140.
1885.	T. E. Scrutton.	Roman Law in the Admiralty.	Influence of the Roman Law on the Law of England, Ch. XIII, pp. 170-176.
1871.	Anon.	History of Admiralty Jurisdiction in the U. S. Supreme Court.	5 Amer. L. Rev. 581-619.

## CORPORATIONS.

1890.	C. Gross.	History of Later Mercantile Companies.	The Gild Merchant, Vol. I, Ch. 1 (part), VIII, pp. 1-8, 127-147.
1900.	F. W. Maitland.	The Corporation Sole.	16 L. Q. R. 335-354.
1901.	T. B. Napier.	History of Joint Stock Companies.	A Century of Law Reforms, Ch. XII, pp. 379-415.

## CORPORATIONS.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1906.	R. L. Raymond.	The Genesis of the Corporation.	19 H. L. R. 350-365.
1902.	E. B. Seymour.	History of the Common Law Conception of a Corporation.	42 Amer. L. Reg. N. S. 529-551.
1889.	S. Williston.	History of Law of Business Corporations before 1800.	2 H. L. R. 105-124, 149-166.

## SUNDRY TOPICS.

1898.	J. H. Beale.	History of Liability of Carriers.	11 H. L. R. 158-168.
	O. W. Holmes.	Carriers and the Common Law.	13 Am. L. R. 609.
1897.	A. W. Renton.	Chapters in the English Law of Lunacy.	9 Green Bag 387-392, 434-440, 481-493, 527-539.

## AMERICAN COLONIAL LAW.

1901.	S. E. Baldwin.	History of Law of Private Corporations in the Colonies and States.	Two Centuries of Growth of American Law (Yale University), Ch. X (part), pp. 261-281.
1895.	J. S. Bassett.	Colonial Landholding in North Carolina.	11 L. Q. R. 154-166.
	M. M. Bigelow.	Judicial Action by the Provincial Legislature of Massachusetts.	2 Col. Law Rev. 536.
1882.	R. S. Dale.	Adoption of the Common Law by the American Colonies.	21 Am. L. Reg. N. S. 553-574.
1900.	Wm. T. Davis.	Plymouth Colony and Massachusetts Bay.	Judicial History of Massachusetts, Ch. I, II, pp. 1-57.

## AMERICAN COLONIAL LAW.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1885.	S. G. Fisher.	Equity through Common Law Forms in Pennsyl- vania.	1 L. Q. R. 455- 465.
1901.	E. B. Gager.	History of Equity in the American Col- onies and States.	Two Centuries Growth of Amer- ican Law (Yale University) Ch. VI, pp. 129-143.
1900.	T. L. Phillips.	Courts of Justice in the Province of Massachusetts Bay.	34 Am. L. Rev. 566.
1899.	P. S. Reinsch.	English Common Law in the Early American Colo- nies.	pp. 1-59 (No. 31 of Bulletin of Uni- versity of Wiscon- sin, Vol. II, pp. 393-456, of Eco- nomics Series).
1901.	H. W. Rogers.	History of Law of Municipal Corpor- ations in the Col- onies and States.	Two Centuries of Growth of Amer- ican Law (Yale University), Ch. IX, pp. 202-240.
1903.	S. L. Sioussat.	Theory of the Exten- sion of English Statutes to the Plantations.	The English Stat- utes in Maryland, John Hopkins Studies, Vol. XXI, Ch. II, III, pp. 16-42.
1896.	W. R. Shepherd.	History of the Land System.	History of Propri- etary Government in Pennsylvania (Columbia Stu- dies in History, Vol. VI), Ch. I- III, pp. 1-83.
1895.	J. B. Thayer.	Chapter in Legal History of Massa- chusetts (on Evi- dence).	9 H. L. R. 1-12.
1884.	S. D. Wilson.	Courts of Chancery in America in the Colonial Period.	18 Amer. L. Rev. 226-255.

## AMERICAN COLONIAL LAW.—Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1889.	E. H. Woodruff.	The History of Chancery in Massachusetts.	5 L. Q. R. 370-386.
1896.	W. R. Shepherd.	History of the Judicial System.	History of Proprietary Government in Pennsylvania (Columbia Studies in History, Vol. VI), pp. 370-400.

## EXPANSION AND REFORM OF THE LAW IN THE 1800s.

1901.	G. E. Beers.	Changes of Real Property Law in the United States.	Two Centuries of Growth of American Law (Yale University), C. III, pp. 51-65.
1901.	A. Birrell.	Changes in Equity Procedure and Principles.	A Century of Law Reform, Ch. III, pp. 77-202.
1901.	L. M. Daggett.	Changes of Law of Wills and Descent in the United States.	Ch. VIII (part), pp. 167-202, Two Centuries of Growth of American Law (Yale University).
1894.	J. F. Dillon.	The Reforms of the Law in 1600 as Influenced by Bentham.	Laws and Jurisprudence of England and America, 1894.
1894.	J. F. Dillon.	America's Contribution to Law Reform in 1800s.	Laws and Jurisprudence of England and America.
1848.	F. Dwarries.	Historical Review of Reforming Statutes from Charles II to George III, 1670-1820.	Treatise on Statutes, Vol. II, pp. 835-898 (without notes).
1901.	M. Lush.	Changes in the Law affecting Married Women.	A Century of Law Reforms, Ch. XI, pp. 342-379.

EXPANSION AND REFORM OF THE LAW IN THE 1800s.—  
Continued.

YEAR.	AUTHOR.	TITLE.	CITATION.
1901.	A. Underhill.	Changes in the Law of Real Property.	A Century of Law Reforms, Ch. IX, X, pp. 280-342.
1901.	J. E. R. de Villiers.	History of Land Transfer Reform in the 1800s.	History of Legislation concerning Property in England. Introd. and Chs. I, II, pp. xi-xix, 1-49, 69-70.
1875.	R. K. Wilson.	Changes in the Form of the Law and in Legal Procedure under Bentham's Influence in the 1800s.	Modern English Law, Part II, Chs. I, III, IV, 132-141, 157-186, 244-257.
1904.	J. H. Beale.	Development of Jurisprudence during the past Century.	18 H. L. R. 271 283.

PROCEEDINGS  
OF THE  
SIXTEENTH ANNUAL CONFERENCE  
OF  
COMMISSIONERS ON UNIFORM STATE LAWS  
HELD AT  
ST. PAUL, MINNESOTA,  
*August 22, 24 and 25, 1906.*

OFFICERS OF THE CONFERENCE,  
1906-1907.

AMASA M. EATON, *President*,  
Providence, Rhode Island.

JOHN C. RICHBERG, *Vice-President*,  
Chicago, Illinois.

CHARLES THADDEUS TERRY, *Secretary*,  
100 Broadway, New York, New York.

TALCOTT H. RUSSELL, *Treasurer*,  
42 Church Street, New Haven, Connecticut.

BUCHANAN PERIN, *Assistant Secretary*,  
Mercantile Library Building, Cincinnati, Ohio.

MEMORANDUM.

The National Conference of Commissioners on Uniform State Laws is made up of Commissioners created by the different states, meeting in conference and organizing themselves into a national body for the better accomplishment of the work for which its members were appointed by the states. The Commissioners, usually three from each state, are appointed under laws of the respective states creating them,



usually for five years, with authority to confer with Commissioners of the other states and recommend forms of bills or measures to bring about uniformity of law in the execution and proofs of deeds and wills, in the laws of bills and notes, marriage and divorce and other subjects where such uniformity seems practicable and desirable. The officers of the National Conference consist of a President, Vice-President, Secretary, Treasurer and Assistant Secretary, elected annually. Sixteen Conferences have so far been held; the first at Saratoga for three days, beginning August 24, 1892, and the sixteenth at St. Paul, Minnesota, August 22, 24 and 26, 1906.

A complete list of the Commissioners of the several states, with standing committees, will be found in the following pages.

The time of the Sixteenth Conference was largely taken up in the consideration of the Uniform Sales Act, drafted by Professor Samuel Williston, of the Harvard Law School, and of the Uniform Warehousemen's Act, drafted by Professor Williston and Barry Mohun, Esq., author of a well-known work on this subject. They were adopted and it was voted to recommend them for passage by the legislatures of the several states.

Professor Williston was employed to draft an act to make uniform the law of certificates of stocks.

The Committee on Commercial Law was authorized to have the drafts of the Bills of Lading Act and of the Partnership Act printed and distributed in order to obtain expert comment and criticism to facilitate the perfecting of these measures before their final adoption by the Conference.

In accordance with the Constitution and By-Laws adopted at this Conference, the Commissioners will please advise the Secretary of the date of their appointment, specifying the law or authority under which the appointment was made and the duration of their term of office; also of any changes in the personnel of the respective State Commissions.

The Conference earnestly urges upon the legislatures of the several states, as well as upon their Commissioners, the import-

ance of introducing at the next session all of the bills recommended which have not passed, and the Secretary would ask members to communicate with him whenever such bills are introduced.

In case the list of commissioners as printed in this report is not correct, or any changes are made subsequently, the Secretary should be notified at once.

Extra copies of this report and of such previous reports as are extant may be obtained on application to the President or the Secretary.

CONSTITUTION AND BY-LAWS  
OF THE  
COMMISSIONERS ON UNIFORM STATE LAWS.

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CONSTITUTION.

ARTICLE I.

*Name and Object.*

SECTION 1. This Conference or Association of Commissioners shall be known as "Commissioners on Uniform State Laws."

SEC. 2. Its object shall be to promote uniformity of state laws by affording the Commissioners on Uniform State Laws, appointed in the different states of the United States of America, an opportunity of meeting in Annual Conference for the better accomplishment of the work for which they were appointed.

ARTICLE II.

*Membership.*

SECTION 1. Its members shall consist of the Commissioners appointed under the laws or by the authority of the respective states of the United States of America to bring about uniformity of state laws, whose commissions give them authority to confer with Commissioners of the other states of said United States.

SEC. 2. Each Commissioner, upon his first attendance at an Annual National Conference of Commissioners and on his reappointment, shall file with the Secretary of the Conference the date of his commission, a statement of the term for which he is appointed and a reference to the Act of Assembly or other authority under which he has been appointed a Commissioner.

## ARTICLE III.

*Officers and Committees.*

SECTION 1. The following officers shall be elected at each Annual Conference for the year ensuing :

A President, Vice-President, Treasurer, Secretary, Assistant Secretary, and an Executive Committee shall be constituted which shall consist of the President, Vice-President, Treasurer, all of whom shall be *ex-officio* members, together with four other members to be appointed by the President.

SEC. 2. The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of seven members each :

1. Executive.
2. Commercial Law.
3. Wills, Descent and Distribution.
4. Marriage and Divorce.
5. Conveyances.
6. Depositions and Proof of Statutes of other States.
7. Insurance.
8. Congressional Action.
9. Appointment of New Commissioners.
10. Purity of Articles of Commerce.
11. Uniform Incorporation Law.
12. The Torrens System and Registration of Title to Land.
13. Banks and Banking.<sup>1</sup>

A majority of those members of any committee who may be present at any Annual Conference shall constitute a quorum of such committee for the purposes of such Conference.

## ARTICLE IV.

*Duties of Members.*

SECTION 1. It shall be the duty of the Commissioners from each state, at least thirty days before each Annual Conference, to report to the Chairman of the Executive Committee the

<sup>1</sup>Amendment adopted in 1906.

enactment of any laws or the filing of any judicial decisions in the state from which they are appointed, upon the subject of uniform legislation in the United States.

SEC. 2. It shall be the duty of the Commissioners from each state to attend the Annual Conference of the Commissioners from the various states, or to arrange before each Annual Conference for the attendance of at least one Commissioner from their state at such Annual Conference.

SEC. 3. It shall be the duty of the Commissioners from each state to report to the President of the National Conference the death or resignation of any Commissioner from their state.

SEC. 4. It shall be the duty of the Commissioners from each state to endeavor to secure from the legislature of their state an appropriation toward defraying the annual expenses of the National Conference of Commissioners.

SEC. 5. It shall be the duty of the Commissioners from each State to file with the President, Secretary and members of the Executive Committee a copy of their reports to the governor or legislature of their respective states.

#### ARTICLE V.

##### *By-Laws.*

By-Laws may be adopted, repealed or amended at any Annual Conference of Commissioners by a majority of the Commissioners present.

#### ARTICLE VI.

##### *Annual Address.*

The President shall open each Annual Conference with an address, in which he shall communicate such changes in the statute laws of each state as tend to promote uniformity of legislation in the United States, and also any matters of interest concerning subjects of legislation, as to which uniformity may seem practicable and desirable, as well as any matters of general interest relating to the work and aims of the Conference. The topics referred to in the President's

Annual Address relating to subjects pertinent to the work of this Conference, with his recommendations thereon, shall be referred to the appropriate committee or to special committees of the Conference, and each committee shall report at the next Conference upon such matters so referred.

#### ARTICLE VII.

##### *Annual Conference.*

The Annual Conference of Commissioners shall be held yearly at such time and place as shall be selected by the members of the Executive Committee, and those Commissioners present at each daily session of such Conference shall constitute a quorum.

#### ARTICLE VIII.

##### *Amendments.*

This Constitution may be altered or amended by a two-thirds vote of the Commissioners present at any Annual Conference; but no such change shall be made at any conference at which less than fifteen Commissioners are present.

#### ARTICLE IX.

##### *Construction.*

The word "state," whenever used in this Constitution, shall be deemed to be equivalent to state, territory or district, or insular possession of the United States of America.

#### ARTICLE X.

##### *Privileges at Conference.*

The members of the Committee on Uniform State Laws of the American Bar Association shall be privileged to attend the Annual Conference of Commissioners and to participate in the discussions of the Conference, but without the right to vote.

## BY-LAWS.

*Calling to Order.*

SECTION 1. The Annual Conference shall be called to order by the President, or, in his absence, by the Vice-President, or, in the absence of both the President and Vice-President, by the Secretary of the last preceding Conference.

*Roll Call.*

SEC. 2. The Secretary shall call the roll of members by states and report the names of those present.

*Officers.*

SEC. 3. The Conference shall annually thereupon proceed, upon nomination of a committee appointed for that purpose, or by a direct vote of the Conference, as it shall determine, to elect a President, a Vice-President, Treasurer, Secretary and Assistant Secretary, who shall serve as such during the Conference and until their successor shall be elected.

All officers, except the Assistant Secretary, shall be chosen from the Commissioners.<sup>1</sup>

*Duties of Officers.—President.*

SEC. 4. The President shall preside at all meetings of the Conference, appoint all standing committees and, unless otherwise ordered by a vote of the Conference, he shall also appoint the members of special committees. It shall be his duty to make an annual address or report to the members of the Conference.

*Vice-President.*

SEC. 5. The Vice-President, during the absence or inability of the President, shall possess all the powers and perform all the duties of the President in his stead.

*Treasurer.*

SEC. 6. The Treasurer shall receive all the funds of the National Conference of Commissioners and shall keep and

<sup>1</sup>Amendment adopted in 1906.

disburse the same, under the direction of the Executive Committee. He shall give bond with a surety company as surety for the faithful performance of his duties, in such form and in such amount as may be from time to time required by a vote of the National Conference, and such bond shall be deposited with the President for safe keeping. The premium on such bond shall be paid by the Conference. He shall keep, or cause to be kept, regular books and full accounts, showing all the receipts and disbursements, which books and accounts shall be open at all times to the inspection of the President or any member of the Executive Committee. He shall report, at each Annual Meeting of the Conference, as to the financial condition of the treasury, with a detailed statement of the receipts and disbursements. All of the funds of the National Conference shall be deposited in the name of the Treasurer, in such deposit banks or trust companies as shall be designated from time to time by a vote of the Conference; such funds shall be disbursed by the Treasurer by checks signed by him, every voucher having endorsed upon it the approval of the Chairman of the Executive Committee.

*Secretary.*

SEC. 7. The Secretary shall keep a record of the proceedings of the Conference, and of such other matters as may be directed to be placed on the files of the Conference; he shall keep an accurate roll of the officers and members of the Conference, with the dates of the attendance of each Commissioner, the date of his commission and the term thereof; he shall issue notices of all meetings of the National Conference, in such form as shall be approved by the Executive Committee; notify the members of all committees of their election or appointment, conduct the correspondence of the Conference, and report to the Executive Committee, prior to the Annual Conference, a summary of his transactions during the year; shall perform such other duties as may be required of him by the Conference, the President, or the Executive Committee, and his books and



papers shall at all times be open to the inspection of the Executive Committee, and he shall receive such compensation for his services as shall be allowed by the Conference.

*Assistant Secretary.*

SEC. 8. The Assistant Secretary shall assist the Secretary in the performance of his duties, and act for him in his absence.

*Committees.*

SEC. 9. The President, as soon as may be after his election, shall appoint the following standing committees :

1. Executive.
2. Commercial Law.
3. Wills, Descent and Distribution.
4. Marriage and Divorce.
5. Conveyances.
6. Depositions and Proof of Statutes of Other States.
7. Insurance.
8. Congressional Action.
9. Appointment of New Commissioners.
10. Purity of Articles of Commerce.
11. Uniform Incorporation Law.
12. The Torrens System and Registration of Title to Land.
13. Banks and Banking.

*Order of Business.*

SEC. 10. At each session of the Conference the order of the business shall be as follows, unless otherwise ordered by the Conference :

1. Call of the Roll.
2. Address of the President.
3. Reading of Minutes of Last Meeting.
4. Election of Officers.
5. Report of Executive Committee.
6. Report of Standing Committees and discussion thereof in the order named in article III, section 2, of the Constitution.

7. Reports of Special Committees.
8. Unfinished Business.
9. New Business.

*Reports of Committees.*

SEC. 11. All reports of committees shall be in writing. No Commissioner or person privileged to participate in the discussions, except the member of the committee making the report, shall speak more than once to the subject matter of the report, nor for more than ten minutes, until after all the Commissioners shall have had an opportunity to be heard. A stenographer shall be employed at each annual meeting.

*Motions and Resolutions.*

SEC. 12. Motions and resolutions shall, on request of the Chair, be reduced to writing and be referred at once to the appropriate committee, unless otherwise directed by a majority vote of members present.

When a question is under debate, no motion shall be received but:

1. To adjourn.
2. To take a recess.
3. To lay on the table.
4. To postpone to a certain day.
5. To commit.
6. To amend.
7. To postpone indefinitely.

Which several motions shall take precedence in the order in which they stand arranged. When a recess is taken during the pendency of any question, the consideration of such question shall be resumed upon the reassembling of the Conference unless otherwise determined.

A motion to adjourn shall always be in order; that and the motion to lay on the table shall be decided without debate. A motion for recess, pending the consideration of other business, shall not be debatable.

*Absence of Members of Conference.*

SEC. 13. When any state having a commission shall fail to be represented at two consecutive meetings of the Conference, the President shall notify the Governor of said state of the absence of its Commissioners for such action by the Governor as he may deem proper, and unless the non-attendance has been excused by the Conference.

*Reports of Committees.*

SEC. 14. Each committee whose province is some branch of law shall report annually what, if any, recommendations it desires to make; what progress has been made in securing the adoption of bills, within its province, already recommended by the Conference; and what difficulties have been met in securing the adoption of such bills. It shall be the duty of the Executive Committee to call the attention of the Chairman of each such committee to this rule a reasonable time before each annual meeting of the Conference.

*Printing, Etc.*

SEC. 15. All papers read before the Conference shall be lodged with the Secretary. The annual address of the President, the reports of committees, and so much of the proceedings at the Annual Conference as the Executive Committee shall direct, shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Executive Committee.

The Secretary shall send one copy of the report of the proceedings of the Conference to the President of the United States, and to each of the Justices of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Governor, and to the Chief Judge of the Court of last resort of each state, and to the State Librarian thereof, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Conference.

SEC. 16. The terms of office of all officers elected at any annual meeting shall commence with their election.

SEC. 17. The President shall appoint all committees, within thirty days after the annual meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed.

SEC. 18. The Treasurer's report shall be examined and audited annually, before its presentation to the Conference, by two members to be appointed by the President of the Conference.

#### *Executive Committee.*

SEC. 19. The Executive Committee shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as the Chairman shall appoint.

If, at any annual meeting of the Conference, any member of the committee shall be absent, the vacancy may be filled by the members of the committee present.

It shall be the duty of the Executive Committee to make all arrangements for the annual meeting of the Conference, and to endeavor to secure the attendance at each annual Conference of the Commissioners from the states represented in the Conference; to communicate with the Chairman of each standing committee and each special committee at least thirty days before the meeting of the Annual Conference with the view of securing a statement of the work of such committee since the preceding Annual Conference, and to attend to such other matters as may be from time to time referred to the committee by the Conference.

SEC. 20. Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

SEC. 21. The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee during the interval between the annual meetings of the Conference, shall be paid by the Treasurer on the approval and by the order of the Executive Committee out of such appropriation as to the Executive Committee may seem necessary in such case on previous application in advance of its expenditure.

SEC. 22. All reports of committees containing any recommendation for action on the part of the Conference shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. No legislation shall be recommended or approved except upon the report of a committee.

SEC. 23. It shall be the duty of the Commissioners from each state to endeavor to procure the enactment by the legislature of their state of each and every law recommended by the Conference, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill when there shall be such draft; and whenever this Conference shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association with the request of this Conference that such State Bar Association shall co-operate with the Commissioners of that state in having a bill introduced in the legislature of their state containing the subject matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every state where there is no State Bar Association, a copy of such resolution, with a similar request, shall be sent to the President of the Bar Association of the principal city in such state; and in every instance where the form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

SEC. 24. These By-Laws may be amended at any Conference of the Commissioners by a majority vote of the Commissioners present at such Conference.

LIST OF  
COMMISSIONERS ON UNIFORM STATE LAWS  
1906.

- ARKANSAS.—John Fletcher, Main and Markham Streets, Little Rock.
- ALABAMA.—Frederick G. Bromberg, 72 St. Francis Street, Mobile; Henry Gonsmiers, Mobile.
- ARIZONA.—Edward Kent, Phoenix; George R. Davis, Tucson; E. E. Ellinwood, Bisbee.
- CALIFORNIA.—John F. Davis, 530-534 Crossley Building, San Francisco  
Charles Monroe, California Club, Los Angeles.
- COLORADO.—Robert J. Pitkin, 441 Equitable Building, Denver; Jacob Fillius, 830 Cooper Building, Denver; Thomas H. Devine, Opera House Block, Pueblo.
- CONNECTICUT.—Talcott H. Russell, New Haven; Walter E. Coe, Stamford; Erliss P. Arvine, New Haven.
- DISTRICT OF COLUMBIA.—F. L. Siddons, Washington; Aldis B. Browne, Washington; Walter C. Clephane, Washington.
- FLORIDA.—Robert W. Williams, Tallahassee; John C. Avery, Pensacola  
Louis C. Massey, Orlando.
- GEORGIA.—Peter W. Meldrim, Savannah; A. C. Pate, Hawkinsville.
- ILLINOIS.—John C. Richberg, 1304 Rector Building, Chicago; Arthur A. Leeper, Virginia, Cass Co.
- INDIANA.—Oscar H. Montgomery, Seymour; Samuel O. Pickens, Indianapolis; John Morris, Fort Wayne; Robert S. Taylor, Fort Wayne.
- IOWA.—Emlin McClain, Iowa City; H. O. Weaver, Wapello.
- KANSAS.—John D. Milliken, McPherson; J. O. Wilson, Salina; Charles W. Smith, Stockton.
- LOUISIANA.—Thomas J. Kernan, 414 Third Street, Baton Rouge; W. O. Hart, 134 Carondelet Street, New Orleans; J. R. Thornton, Alexandria.
- MAINE.—Charles F. Libby, 57 Exchange Street, Portland; Frank M. Higgins, Limerick; Hannibal E. Hamlin, Ellsworth.
- MARYLAND.—Milton G. Urner, Frederick; George R. Gaither, Jr., Baltimore; Stevenson A. Williams, Bel Air.
- MASSACHUSETTS.—James Barr Ames, Harvard Law School, Cambridge; George E. Gardner, 18 Tremont Street, Boston; Frederick H. Nash, 199 Washington Street, Boston.

- MICHIGAN.—C. W. Casgrain, 1009 Hammond Building, Detroit; George W. Bates, 32 Buhl Building, Detroit; Wesley W. Hyde, 613 Washington Trust Building, Grand Rapids.
- MINNESOTA.—Charles E. Flandrau, St. Paul; W. S. Pattee, Minneapolis; W. W. Billson, Duluth; Rome G. Brown, 1006 Guaranty Building, Minneapolis; Frederick V. Brown, Minneapolis; Daniel Fish, Minneapolis; Howard S. Abbott, Minneapolis; Frank D. Larrabee, Minneapolis; T. R. Kane, St. Paul; Albert R. Moore, St. Paul; John D. O'Brien, St. Paul.
- MISSISSIPPI.—R. H. Thompson, Jackson; S. S. Calhoun, Jackson; W. V. Sullivan, Oxford.
- MONTANA.—J. B. Clayberg, Helena; T. C. Marshall, Missoula.
- NEBRASKA.—Roscoe Pound, Lincoln; John L. Webster, 826 N. Y. Life Building, Omaha; Ralph W. Breckinridge, 711 N. Y. Life Building, Omaha.
- NEW HAMPSHIRE.—H. E. Burnham, Manchester; Ira A. Chase, Bristol;
- NEW JERSEY.—Woodrow Wilson, Princeton; John B. Hardin, Prudential Building, Newark; Frank Bergen, Elizabeth.
- NEW YORK.—E. W. Huffcut, Ithaca; Charles Thaddeus Terry, 100 Broadway, New York City.
- NORTH CAROLINA.—Fabius H. Busbee, Raleigh.
- NORTH DAKOTA.—H. R. Turner, Fargo; John E. Greene, Minot.
- OHIO.—Seth S. Wheeler, Lima; Francis B. James, Mercantile Library Building, Cincinnati.
- OKLAHOMA.—J. C. Strang, Guthrie; J. W. Shartell, Oklahoma City; C. R. Brooks, Guthrie; John H. Mosier, Norman.
- PENNSYLVANIA.—William H. Staake, 501-506 Franklin Building, Philadelphia; Walter George Smith, 1006 Land Title Building, Philadelphia; C. La Rue Munson, Elliot Block, Williamsport.
- RHODE ISLAND.—Amasa M. Eaton, 86 Weybossett St., Providence; James Tillinghast, Providence; Clark H. Johnson, Providence.
- SOUTH CAROLINA.—H. E. Young, 28 Broad Street, Charleston; T. Moultrie Mordecai, Charleston.
- SOUTH DAKOTA.—A. B. Kittridge, Sioux Falls; L. B. French, Yankton.
- VERMONT.—O. M. Barber, Bennington; Joseph P. Lamson, Cabot; A. A. Hall, St. Albans.
- VIRGINIA.—A. A. Phlegar, Christiansburg; R. T. Barton, Winchester; John Garland Pollard, Richmond.
- WASHINGTON.—Charles E. Shepard, New York Building, Seattle; Ira P. Englehart, North Yakima; Alfred Battle, Alaska Building, Seattle.
- WISCONSIN.—Edward W. Frost, Wells Building, Milwaukee.

LIST OF  
COMMISSIONERS ON UNIFORM STATE LAWS  
PRESENT AT THE  
SIXTEENTH ANNUAL CONFERENCE,  
ST. PAUL, MINNESOTA.

*August 25 to 29, 1906.*

- ALABAMA.—Frederick G. Bromberg, 72 St. Francis St., Mobile.  
 ARIZONA.—E. E. Ellinwood, Bisbee.  
 CALIFORNIA.—Charles Monroe, California Club, Los Angeles.  
 CONNECTICUT.—Erlas P. Arvine, New Haven; Walter E. Coe, Stamford  
     Talcott H. Russell, New Haven.  
 DISTRICT OF COLUMBIA.—F. L. Siddons, Washington.  
 FLORIDA.—R. W. Williams, Tallahassee.  
 GEORGIA.—Peter W. Meldrim, Savannah.  
 ILLINOIS.—John C. Richberg, Rector Building, Chicago.  
 INDIANA.—John Morris, Fort Wayne; Robert S. Taylor, Fort Wayne.  
 KANSAS.—Charles W. Smith, Stockton.  
 LOUISIANA.—W. O. Hart, New Orleans; Thomas J. Kernan, Baton  
     Rouge; J. R. Thornton, Alexandria.  
 MAINE.—Frank M. Higgins, Limerick; Charles F. Libby, Portland.  
 MASSACHUSETTS.—James Barr Ames, Cambridge; Frederick H. Nash,  
     Boston.  
 MINNESOTA.—Howard S. Abbott, Minneapolis; Thomas D. O'Brien, St.  
     Paul; John D. O'Brien, St. Paul; Rome G. Brown, Minneapolis;  
     Daniel Fish, Minneapolis; T. R. Kane, F. D. Larrabee, Minneapolis  
     A. R. Moore, St. Paul; W. S. Pattee, Minneapolis.  
 NEBRASKA.—Ralph W. Breckenridge, Omaha; Roscoe Pound, Lincoln  
     John L. Webster, Omaha.  
 NEW YORK.—Ernest W. Huffcutt, Ithaca; Charles Thaddeus Terry, New  
     York.  
 NORTH CAROLINA.—Fabius H. Busbee, Raleigh.  
 OHIO.—Francis B. James, Cincinnati.  
 OKLAHOMA.—John H. Mosier, Norman.  
 PENNSYLVANIA.—William H. Staake, Philadelphia; Walter George  
     Smith, Philadelphia.  
 RHODE ISLAND.—Amasa M. Eaton, Providence; Clarke H. Johnson,  
     Providence.  
 SOUTH CAROLINA.—T. Moultrie Mordecai, Charleston.  
 WISCONSIN.—Edward W. Frost, Milwaukee.



LIST OF COMMITTEES OF THE CONFERENCE  
OF  
COMMISSIONERS ON UNIFORM STATE LAWS  
1906-7.

(Names given first are Chairmen.)

1. Executive Committee.

*Appointed Members.*

William H. Staake, *Chairman*, 501 Franklin Building, Philadelphia, Pa.  
Francis B. James, 1004-5 Mercantile Library Bldg., Cincinnati, Ohio.  
Peter W. Meldrim, Savannah, Georgia.

*Ex-officio.*

Amasa M. Eaton, Providence, Rhode Island, *President*.  
John C. Richberg, Chicago, Illinois, *Vice-President*.  
Talcott H. Russell, 42 Church Street, New Haven, Conn., *Treasurer*.  
Charles Thaddeus Terry, 100 Broadway, New York, N. Y., *Secretary*.

2. Commercial Law.—Francis B. James, James Barr Ames, W. O. Hart, Ernest W. Huffcut, Charles F. Libby, Walter George Smith, Talcott H. Russell.
3. Wills, Descent and Distribution.—W. O. Hart, Frank M. Higgins, Clarke H. Johnson, Edward Kent, John Morris, Roscoe Pound, Charles E. Shepard.
4. Marriage and Divorce.—Walter George Smith, James Barr Ames, P. W. Meldrim, C. La Rue Munson, T. Moultrie Mordecai, John C. Richberg, William H. Staake.
5. Conveyances.—H. E. Burnham, C. R. Brooks, E. E. Ellinwood, C. E. Flandrau, Edward Kent, Charles Thaddeus Terry, J. W. Wright.
6. Depositions and Proof of Statutes of Other States.—Ira A. Chase, E. E. Ellinwood, John R. Hardin, C. La Rue Munson, A. A. Phlegar, F. L. Siddons.
7. Insurance.—Charles F. Libby, C. La Rue Munson, Frederick H. Nash, John C. Richberg, Talcott H. Russell, John L. Webster, Robert W. Williams.
8. Congressional Action.—F. L. Siddons, Robert T. Barton, Fabius H. Busbee, Emlin McClain, William H. Staake, John G. Pollard, Stevenson W. Williams.

9. **Appointment of New Commissioners.**—Amasa M. Eaton, Walter E. Coe, W. O. Hart, William H. Staake, Walter George Smith, Charles E. Shepard, Charles Thaddeus Terry.
  10. **Purity of Articles of Commerce.**—William H. Staake, Erliss P. Arvine, Aldis B. Browne, John Morris, J. R. Thornton, Walter C. Clephane, Walter E. Coe.
  11. **Uniform Incorporation Law.**—Frank Bergen, Erliss P. Arvine, Frederick V. Brown, Charles Monroe, John H. Mosier, John C. Richberg, Seth S. Wheeler.
  12. **The Torrens System and Registration of Title to Land.**—W. O. Hart, Erliss P. Arvine, Walter E. Coe, George E. Gardner, A. R. Moore, Frederick H. Nash, Charles Thaddeus Terry.
  13. **Banks and Banking.**—Ralph W. Breckenridge, James Barr Ames, Ernest W. Huffcut, Francis B. James, Thomas J. Kernan, Talcott H. Russell, Walter George Smith.
- Special Committee on Vital and Penal Statistics.**—F. L. Siddons, Aldis B. Browne, Walter C. Clephane.

## PROCEEDINGS.

*St. Paul, Minnesota,  
Saturday, August 25, 1906, 10 A. M.*

The Sixteenth Annual Conference of the Commissioners on Uniform State Laws convened in the Senate chamber of the Capitol of Minnesota at St. Paul, on Saturday, August 25, 1906, at 10 A. M., the President, Amasa M. Eaton, in the Chair.

The President introduced the Governor of Minnesota, John A. Johnson, who welcomed the Commissioners on behalf of the state, and assured them of the co-operation of its people in their work to bring about uniformity of legislation.

The stenographer of the Conference, Mr. Charles A. Morrison, was elected temporary Secretary, the Secretary of the Conference not being present.

The temporary Secretary called the roll of states.

*(See list of Commissioners and of others present at this Conference.)*

The reading of the minutes of the previous meeting was dispensed with, they having been printed and distributed among the members.

On motion of W. O. Hart, of Louisiana, the Chair appointed the following committee of five members to nominate officers for the ensuing year: W. O. Hart, of Louisiana; Francis B. James, of Ohio; Rome G. Brown, of Minnesota; Walter E. Coe, of Connecticut, and Clarke H. Johnson, of Rhode Island.

The President then delivered the annual address.

*(The Address follows these Minutes.)*

John D. O'Brien, of Minnesota, on behalf of the Minnesota members of the Conference, offered their services in carrying out the purposes of the Conference and placed at their disposal the State Library and the committee rooms in the Capitol, as

well as his own office in the Insurance Department with its stenographers, etc.

The President thanked Mr. O'Brien, on behalf of the Conference, for his very cordial and courteous offer.

On motion of Walter George Smith, of Pennsylvania, those portions of the President's annual address which recommend the consideration of special matters were referred to the appropriate committees, with the request that they make report thereon to the Conference before its adjournment.

On motion of W. O. Hart, of Louisiana, a committee of three was appointed by the Chair, consisting of W. O. Hart, William H. Staake and Charles Thaddeus Terry to draft and present suitable resolutions respecting members deceased since the last Conference.

The next business in order being the report of the Executive Committee, on motion of the Chairman, William H. Staake, it was temporarily passed, to allow it to be read and signed at a meeting of this committee to be held this evening.

The Committee on Commercial Law, through its Chairman, Francis B. James, of Ohio, reported as follows :

This committee has had in its hands the drafts of four acts, the Sales Act, the Warehouse Receipts Act, the Bill of Lading Act and the Partnership Act. In accordance with a resolution passed at the last Conference, the committee has printed two thousand copies of the Sales Act and the Warehouse Receipts Act and has distributed nearly all of them among the members of the Conference, commercial organizations, lawyers, judges, law teachers and law writers, inviting criticism and suggestions. The Bill of Lading Act and the Partnership Act have been delivered to the committee within a few days only, and consequently there has been no time to print and distribute them. All this has involved much correspondence. The Ohio Bankers' Association, the Ohio State Board of Commerce, the Kentucky Bankers' Association and the American Warehousemen's Association have given consideration to the Sales Act and to the Warehouse Receipts Act. A joint meet-

ing has been held in New York city of the committee of the American Bankers' Association, the committee of the American Warehousemen's Association and the Committee on Commercial Law of this Conference, at which meeting the Warehouse Receipts Act was very fully discussed. And finally this Committee on Commercial Law has been in session two days in St. Paul before this Conference, considering these various acts. The committee recommends considering first the Warehouse Receipts Act, the draftsmen, Professor Williston and Mr. Mohun reading it, section by section, informing the Conference of changes made at the committee meeting. It can thus be passed upon by the Conference, section by section, with full knowledge of what has been done and the reasons therefor.

The detailed consideration proposed of the acts from the Committee on Commercial Law was passed until a later time.

The President: The next committee to be heard from is the Committee on Wills, Descent and Distribution.

W. O. Hart, of Louisiana, a member of the committee, reported the death of its Chairman, Edwin Burritt Smith, of Illinois, and that there had been no meeting of the committee during the year.

The President: The next committee to be heard from is the Committee on Marriage and Divorce.

John C. Richberg, of Illinois, a member of the committee, reported the death of its Chairman, Walter S. Logan, of New York, and that there is no report.

The President: Is there any report from the Committee on Conveyances? There does not seem to be any.

Is there any report from the Committee on Depositions and Proof of Statutes of other states?

Is there any report from the Committee on Insurance?

Charles F. Libby, of Maine, Chairman, submitted the report of that committee and added verbally that since it was written a meeting had been held in St. Paul, August 22, 23 and 24, 1906, of the committee of the Insurance Convention appointed

at its meeting in Chicago, last February, and of its advisory members, consisting of the President of this Conference and the members of its Committee on Insurance; that this committee advised the members of the committee of the Insurance Convention at their request, on certain questions of law that arose in connection with the proposed legislation they were considering; that the committee of the Insurance Convention is to meet again in October; that there was a marked divergence of opinion on many of the important matters covered by the legislation adopted by the legislature of New York; that the indications were that the model proposed—the Ames bill—would with great difficulty be carried through Congress.

The report of the committee was received and ordered to be placed on file.

The President: The next committee to be heard from is the Committee on Congressional Action.

The next is the Committee on Appointment of new Commissioners.

The next is the Committee on Purity of Articles of Commerce.

This was passed temporarily, to allow a meeting of the committee.

The President: Next in order is the report from the Committee on a Uniform Incorporation Law.

Next is the report of the Committee on the Torrens System of Land Registration.

It was passed temporarily, to allow a meeting of the committee.

W. O. Hart, of Louisiana, on behalf of the committee to nominate officers, moved to amend section 3 of the by-laws by adding the following words: "All officers, except the Assistant Secretary, shall be chosen from the Commissioners," adding, It is the opinion of the committee that the Secretary should be a Commissioner. We therefore ask the adoption of this amendment.

Walter E. Coe, of Connecticut: I second the adoption of the amendment.

The motion was adopted.

W. O. Hart, on behalf of the same committee, submitted the following list of nominations for officers of the Conference for the ensuing year.

For President, Amasa M. Eaton, of Providence, Rhode Island; for Vice-President, John C. Richberg, of Chicago, Illinois; for Treasurer, Talcott H. Russell, of New Haven, Connecticut; for Secretary, Charles Thaddeus Terry, of New York, New York; for Assistant Secretary, Buchanan Perin, of Cincinnati, Ohio.

On motion of W. O. Hart, the temporary Secretary was requested to cast the ballot of the Conference for their election, and they were declared to be the duly elected officers of the Conference for the year ensuing.

The President: Gentlemen, I thank you for the honor conferred upon me. You may rest assured of my continued interest in the work of our Conference and of my increased sense of feeling that it is work of great importance. I desire that every one of you may equally feel this. I urge upon all members of the Conference continued and even increased interest in our work, and I ask that you endeavor to attend all our meetings promptly.

Walter George Smith, of Pennsylvania, moved that the sessions of this Conference begin each day at 10 A. M., and continue until 12.30 P. M., when a recess shall be taken until 2.30 P. M., and that the Conference then reassemble and continue in session until 5.30 P. M.

The motion was seconded and carried.

Francis B. James, of Ohio, moved that the Conference now proceed with the consideration of the Warehouse Receipts Act.

The motion was seconded and carried.

The President: The Chair takes pleasure in introducing Professor Williston and Mr. Mohun, the draftsmen of this act, the experts who have been engaged upon this work and would state that the usual procedure has been to have the bill taken up by these gentlemen and read and explained section by section. The Chair therefore calls upon Professor Williston to begin.

*(The details of the discussion upon the various sections are omitted.)*

At 12.30 P. M., a recess was taken until 2.30 P. M.

#### AFTERNOON SESSION.

*Saturday, August 25, 1906, 2.30 P. M.*

The President: The report of the Executive Committee is now in order.

William H. Staake, of Pennsylvania: On behalf of the Executive Committee, I present the following report.

*(The Report follows these Minutes.)*

The President: If there is no objection, the report will be received and placed on file.

John C. Richberg, of Illinois: I am ready now, Mr. President, to present the report of the Committee on the Torrens System of Registration of Land Titles. The report is signed by six out of the seven members of the committee, but from the correspondence that I have had with the absent member I have no doubt he approves of the report.

*(The Report follows these Minutes.)*

The President: If there is no objection, the report will be received and placed on file.

William H. Staake, of Pennsylvania: I have been authorized by the Committee on Purity of Articles of Commerce to present the report of that committee.

*(The Report follows these Minutes.)*



The President: If there is no objection, the report will be received and placed on file.

On motion, a recess was taken for ten minutes to enable the photographer to take a picture of the Conference.

Upon reassembling consideration of the Warehouse Receipts Act was resumed.

*(The details of the discussion are omitted.)*

The President: Before adjourning for the day, the Chair desires to consult the members as to the committees that they desire to be placed upon, and if gentlemen will kindly state their preference the Chair will endeavor to accommodate them.

James Barr Ames, of Massachusetts: I would state to the gentlemen present that I have printed copies of the draft of the proposed Partnership Act, which I shall be glad to give to all.

The President: The Conference will now stand adjourned to Monday morning, and the Chair desires that every member make it a point to be present promptly at the hour of opening, ten o'clock.

## SECOND DAY.

*Monday, August 27, 1906, 10 A. M.*

The President called the Conference to order.

W. O. Hart, of Louisiana: I take great pleasure in stating that through a visit which I was invited to pay and did pay to the annual meeting of the Alabama Bar Association last month, and afterwards by personal interviews with the Governor, whom I met at Asheville, there have been two Commissioners appointed from that state. Mr. Frederick S. Bromberg, of Mobile, is present.

I also wish to say that through correspondence with my friend, John H. Mosier, of Norman, Oklahoma, he has

been appointed a Commissioner to represent that state and is with us today.

South Carolina is also represented here today in the person of Thomas Moultrie Mordecai, of Charleston. I had the pleasure of meeting him, and I called his attention to the important work of the Conference and the fact that, although South Carolina had representation on our roll, their representatives had not attended for some years. I am glad to say that Mr. Mordecai is with us today.

The President: The Chair takes pleasure in welcoming these gentlemen among us.

I desire to call attention to the fact that we have been enabled to draft the Warehouse Receipts Act through the efficient co-operation of the American Warehousemen's Association, both financially and otherwise. By vote, last year, they were requested to sit with us and the same privilege is extended to them this year. There is with us, therefore, and acting with us, W. H. Robinson, the President of the American Warehousemen's Association, and Albert M. Read, Vice-President of the association, and Chairman of its Committee on Laws and Legislation.

We also have with us today Mr. Thomas B. Paton, the counsel and secretary of the standing Law Committee of the American Bankers' Association. The co-operation of that association has been very valuable to us in carrying out the different measures which we have worked upon.

The Chair takes great pleasure in introducing these gentlemen to you now collectively, and at the earliest opportunity I shall avail myself of the privilege of introducing them to the various members individually.

William H. Staake, of Pennsylvania: May I suggest to you, Mr. President, as some of us may not have had the privilege of personally meeting these gentlemen, that the Secretary be requested to call their names, and as their names are called each gentleman rise and give us an opportunity to know him at least by sight.

President Eaton: The Chair thinks that is an excellent suggestion, and the Secretary will please act upon it.

(The names of the gentlemen to whom the President referred were called by the Secretary and they responded by rising.)

Thomas B. Paton, of New York: Mr. President, I desire to make a brief statement if I may be allowed to do so.

The President: Certainly, sir.

Thomas B. Paton, of New York: I am here representing two important committees of the American Bankers' Association—an association which you all know has rendered effective aid in passing the Negotiable Instruments Act in many of the states. The association at its last convention appointed a permanent standing law committee to provide ways and means to bring about uniformity in the laws of the various states affecting banking and commercial interests. There are numerous detail matters of law which affect injuriously the operation of banking transactions, and it was deemed wise to have a permanent committee to take cognizance of all these matters and to provide ways and means to bring about uniformity. As that is in the direct line of the work of this Conference, on broader lines, perhaps, it seemed advisable for this committee to come in touch with this body and to obtain your co-operation in so far as it may be right and proper to extend it.

I can say that the work of this Conference, so far as I have observed it, has been largely in the codification of general subjects of law, such as the Negotiable Instruments Law, the Sales Law, the Warehouse Receipts Law and the Bills of Lading Law. The work of the standing committee of the American Bankers' Association is more in the details of those subjects and on the particular special points where decisions conflict and where some rules bear harshly here or there. I may cite a single illustration why it is necessary to have some such simple or controlling agency with reference to future uniformity.

Since the Negotiable Instruments Law providing uniformity has been enacted, there have been four states which have

passed a short statute of limitations on forged paper. Three of those states are negotiable instruments states, and one of them—California—is not. And what is peculiar about it is that each one of those statutory provisions is different in phraseology and in legal effect. They all aim—excepting in Montana—to a one year limitation, but they are all different and they all provide a longer or a still longer period. Therefore, in these matters there is a breaking away from uniformity, and as time goes on there will be other matters of amendment to this Negotiable Instruments Law and other matters of enactment in commercial law, and it is very necessary that some certain agency shall supervise this work and see that it is made uniform in all of the states.

Therefore, this standing law committee has been appointed and we hope to have the co-operation of this Conference in our work. If we suggest laws which meet with your approval and obtain your endorsement, they are very much more likely to be adopted by the legislatures of the respective states.

Now, permit me to say one word upon the subject of bills of lading. I am also here representing the special Committee on Bills of Lading, which was appointed at the last convention of the American Bankers' Association. Bankers loan money to a large extent on the security of bills of lading, and by reason of numerous losses, they reached the realization that something must be done to improve the security, or else they must stop loaning money on these documents, and the business of the country would be largely crippled in consequence. The bankers attempted, by conference with the carriers, to agree on a uniform bill which would provide the necessary security; but that failing, we prepared an act to provide a negotiable bill of lading covering interstate shipments, providing the necessary measure of negotiability to give the security which the bankers require, and that act was introduced in Congress, and there was a hearing on it last spring before the House Committee and the Interstate and Foreign Commerce Committee, and the subject was quite fully considered.

Now, the bankers have amended that act as a result of that hearing, but they are still looking for light. I cannot here go into any of the details of the subject, but simply state the general proposition. Here you have provided a law making negotiable to a certain extent bills of lading for uniform enactment in various states.

I had the pleasure and profit of attending the hearings of your Committee on Commercial Law, but so much time was taken up with the consideration of the Warehouse Receipts Act that very little opportunity was given to study the provisions of the Bills of Lading Act. It is my desire to consider that act thoroughly, and if it answers the purpose of the bankers as a matter of security, to see what can be done to fall into the line of work for the enactment of that act in the different states.

I am here, therefore, to learn what I can and to get what light I can, especially on the subject of bills of lading, and also to ask your co-operation in the general work of our standing law committee.

I thank you for your attention.

The President: Mr. Paton, who has just addressed us, is the counsel and also the secretary of the standing law committee of the American Bankers' Association. The Chair is sure it gives us pleasure and will be of great assistance to us to have the co-operation of such a body; and desires to say to him, on behalf of the Conference, that we will cheerfully co-operate with him, as far as possible, and with the association that he represents.

Ralph W. Breckenridge, of Nebraska: In view of the expression of a desire on the part of the American Bankers' Association, through its representative, for the co-operation of this body, and in view of the further fact that this Conference has no committee on banks and banking, I move that section 2 of article III of our Constitution be amended by inserting after the fifteenth line the words, "13, Banks and Banking."

John C. Richberg, of Illinois: I suggest that the motion of the gentleman from Nebraska be referred to the Executive Committee with a resolution that they report upon it at once.

Ralph W. Breckenridge: I accept the suggestion.

The President: The suggestion being acceptable to the mover of the resolution, the motion is that the proposed amendment to our by-laws, adding a standing committee on banks and banking be referred to the Executive Committee, with the request that they report upon it before we adjourn.

The motion to refer was carried.

Talcott H. Russell, of Connecticut: I move that the representative of the American Bankers' Association have permission to address this Conference from time to time, as I think his remarks may be instructive, and I would also make the same motion with respect to the representative present from the American Warehousemen's Association.

Charles F. Libby, of Maine: You mean, of course, when the measures in which they are interested are up for discussion.

Talcott H. Russell: Certainly.

The President: That will be the course pursued, then, in the absence of objection, as it was last year.

The first business this morning is the calling of the roll; but inasmuch as we have a stenographic reporter present the Chair supposes that may be dispensed with.

W. O. Hart, of Louisiana: I move that it is the sense of the Conference that section 10 of the By-laws in reference to the order of business applies only to the opening session of the Conference.

The motion was seconded and carried.

The President: We will now resume the consideration of the Warehouse Receipts Act.

*(The details of the discussion are omitted.)*

The President: Gentlemen, you now have the act as a whole as it comes before you from the Committee on Commer-

cial Law. What is the pleasure of the Conference in relation to it?

After discussion, a motion was made and unanimously carried that the Conference go into committee of the whole, to consider the act, section by section. Peter W. Meldrim, of Georgia, was called to the Chair.

After the committee of the whole arose, a recess was taken until 2.30 P. M.

#### AFTERNOON SESSION.

*Monday, August 27, 1906, 2.30 P. M.*

The President: The Conference will come to order. Before resuming work in committee of the whole, there are a few formal matters to dispose of.

The report of the Committee on a Uniform Incorporation Law will now be read.

*(The Report follows these Minutes.)*

On motion of John C. Richberg, of Illinois, permission was given him to file a minority report. The report of the committee not being signed by its members, on motion of Thomas J. Kernan, of Louisiana, it was *voted* that the report be recommended with authority to the committee to send majority and minority reports to the Secretary for publication in the proceedings of the Conference.

On motion of W. O. Hart, of Louisiana, seconded by Charles F. Libby, of Maine, it was resolved that before each annual Conference, the Secretary send out two copies of the last annual report of the proceedings to each member of the Conference, and that he bring to the Conference one hundred copies for the use of the members.

On motion of Walter George Smith, of Pennsylvania, the Conference now resolved itself into committee of the whole.

Peter W. Meldrim, of Georgia, in the Chair.

Shortly before 5.30 P. M. the committee of the whole arose.

The President in the Chair called the Conference to order.

Peter W. Meldrim, of Georgia, Chairman of the committee of the whole: Mr. President, the committee of the whole, having had under consideration the draft of the proposed Warehouse Receipts Act, reports progress and asks leave to sit again.

The President: Leave will be granted.

The hour of adjournment having arrived, the Conference adjourned until the following morning at ten o'clock.

### THIRD DAY.

*Tuesday, August 28, 1906, 10 A. M.*

The President: The Conference will come to order.

William H. Staake, of Pennsylvania: The Executive Committee reports recommending an amendment to article III, section 2 of the Constitution, by adding: "13, Banks and Banking," thus constituting an additional standing committee of the Conference.

Walter George Smith, of Pennsylvania: I move that the recommendation of the Executive Committee be adopted.

The motion was seconded and adopted by a two-thirds vote of the Commissioners present (the vote being unanimous) and there being more than fifteen Commissioners present.

William H. Staake: The Executive Committee also recommends for adoption the following resolution bearing upon the reference in the President's address to the subject of proper registration of births and deaths as a part of vital statistics and also to the proper collection of penal statistics:

*Resolved*, That the communication of Dr. Cressy L. Wilbur, Chief Statistician of the Section of Vital Statistics of the Cen-



sus Bureau, addressed to the President of the Conference, and the reference in the President's annual address to the subject of uniform registration laws concerning births and deaths as an important part of vital statistics, as well as his reference to penal statistics, be referred to a special committee of three members of the Conference to be appointed by the President, to consider the same and to report to the next annual meeting of the Conference.

The resolution was adopted.

On motion of Ernest W. Huffcut, of New York, the Conference went into committee of the whole for further consideration of the Warehouse Receipts Act.

Peter W. Meldrim, of Georgia, in the Chair.

Shortly before 12.30 the committee of the whole arose. The President in the Chair.

Peter W. Meldrim, of Georgia, Chairman of the committee: Mr. President, the committee having under consideration the draft of an act to make uniform the law of warehouse receipts begs to report progress and to say that the specific report giving in detail the changes that have been made will be submitted at this afternoon's session. The committee therefore asks leave to sit again.

The President: Leave will be granted.

A recess was then taken until 2.30 P. M.

#### AFTERNOON SESSION.

*Tuesday, August 28, 1906, 2.30 P. M.*

The President: The Conference will come to order.

Talcott H. Russell, of Connecticut: Before we enter upon the consideration of the Sales Act, I should like to make a motion.

I move that the Secretary be requested to prepare a statement of the laws of the various states on uniform state commis-

sions, including especially the terms as to compensation and appointment. I need not specify the reasons why this should be done. Of course, there is a great variety among the laws of the states. Some of the states make adequate appropriations for the payment of their Commissioners' expenses, and some of the states make very inadequate appropriations, and some states none at all.

A gentleman from Florida told me that his state had appointed Commissioners to this Conference and appropriated fifty dollars for their expenses. How they were going to travel to St. Paul, except in cold storage, under a negotiable warehouse receipt, I cannot imagine.

The motion was seconded and carried.

Peter W. Meldrim, of Georgia: The committee of the whole, having under consideration the draft of an act making uniform the Law of Warehouse Receipts, begs leave to report the action of that committee, which the Secretary will present in detail if it is asked for.

Walter George Smith, of Pennsylvania: I move that the report be accepted.

The President: The report of the committee of the whole consists of the act in the form in which it is now presented.

On motion the report was accepted.

Francis B. James, of Ohio: The Committee on Commercial Law desires to recommend for adoption the following resolution:

*Be it Resolved*, By the Commissioners on Uniform State Laws at their annual Conference held this 28th day of August, 1906:

1. That the draft of an act entitled "Draft of an act to make uniform the law of warehouse receipts" be approved, and that the legislatures of the several states be requested and urged to enact the same into law.

2. That Professor Samuel Williston and Mr. Barry Mohun prepare appropriate notes to each section and correct any verbal inaccuracies therein.

3. That the Committee on Commercial Law shall cause said draft act and annotations, together with appropriate preface, introduction and other matters which said committee may consider proper, to be printed and distributed.

4. That a sum not to exceed two hundred dollars (\$200) be appropriated for the use of said committee for the printing and distribution of said act.

5. That the Assistant Secretary shall be the secretary of said committee and aid it in the discharge of its duties.

Talcott H. Russell, of Connecticut: I move the adoption of that resolution.

The President: The question will be put on this resolution by calling the roll of states, and those in favor of its adoption will vote "aye" and those opposed "no."

The roll was called, with the following result:

Aye: Alabama, California, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Wisconsin.

Not voting: Florida, Minnesota.

Albert R. Moore, of Minnesota: I desire to state, Mr. President, that the Commissioners from the State of Minnesota deemed it wise not to vote upon the adoption of the law in regard to warehouse receipts, for the reason, among others, that they had been very recently appointed and had not had an opportunity to compare the proposed act with the code recently adopted in this state. Therefore, we beg to be excused from voting.

The President: The Chair would announce that the act as prepared is adopted by this Conference.

A. M. Read, of Washington, District of Columbia: It has been my pleasure to have been with this Conference for three years in endeavoring to get an intelligent bill adopted. We have witnessed the immense amount of work that some of the finest talent in the United States has given to these propositions of good to the many for less than nothing. The work that your

Committee on Commercial Law has done in regard to the matter of warehouse receipts has been above the comprehension of men not intimately connected with it, and on behalf of the American Warehousemen's Association, I wish to thank you for what you have done so willingly and so well.

James Robinson: I heartily endorse what Mr. Read has stated to you, and I desire to assure you of the fact that the American Warehousemen's Association appreciates the great work that this Conference has accomplished.

I also want to say that when the time comes for the various state legislatures to be approached on this question, I hope you will call upon the members of our association in your various states, and I know that they will gladly do all they can to assist in its passage. Whatever our association can do for this Conference in any way, you have only to indicate and it shall be our pleasure to render whatever assistance you require.

Francis B. James, of Ohio: On behalf of the Committee on Commercial Law, I desire to submit and recommend for passage the following resolution:

*Resolved*, That the Commissioners on Uniform State Laws appreciate the co-operation of the American Warehousemen's Association and the American Bankers' Association in the past to promote uniformity in commercial law, and that the co-operation of said bodies and all other organizations will be welcomed by the Conference in the future.

John C. Richberg, of Illinois: In seconding the adoption of this resolution, I desire to say that I believe I voice the sentiments of all members of this Conference when I say that I do not think we have fully expressed the obligations we are under to the Committee on Commercial Law, and especially to the gentlemen representing the Warehousemen's Association, for the time and attention they have given to this matter.

The resolution was adopted.

Francis B. James, of Ohio: On behalf of the Committee on Commercial Law, I desire to submit the Sales Act. Pro-

fessor Williston will explain the changes that have been made in the printed draft.

James Barr Ames, of Massachusetts: I move that we go into committee of the whole for the purpose of considering this act.

The motion was seconded and carried.

W. O. Hart, of Louisiana: Before we go into committee of the whole, I desire to state that I have received a letter from the Commissioners representing the District of Columbia, expressing their very great regret at their inability to be present at this Conference and asking that their excuse be noted.

President Eaton: That will be done.

The Conference will now resolve itself into committee of the whole, and I call upon Mr. Williams, of Florida, to take the Chair.

R. W. Williams, of Florida: I beg to be excused, Mr. President, as I am suffering from a severe cold, which has affected my voice.

The President: Then will Mr. Meldrim, of Georgia, take the Chair?

Peter W. Meldrim, of Georgia: Yes, sir.

Later, upon the rising of the committee of the whole, the President called the Conference to order.

Peter W. Meldrim, of Georgia: Mr. President, the committee of the whole, having under consideration the proposed bill to make uniform the law of Sales, begs leave to report that certain changes have been made, which changes will be referred to by the Secretary if so desired.

Walter George Smith, of Pennsylvania: I move that the report be received and approved.

The motion was seconded and carried.

Francis B. James, of Ohio: The Committee on Commercial Law recommends the adoption of the following resolution:

*Be it Resolved*, By the Commissioners on Uniform State Laws at their annual Conference, held this 28th day of August, 1906 :

1. That the draft of an act entitled "Draft of an Act to make uniform the Law of Sales" be approved, and that the legislatures of the several states be requested and are urged to enact the same into law.

2. That Professor Samuel Williston shall prepare appropriate notes to each section and correct any verbal inaccuracies therein.

3. That the Committee on Commercial Law cause said draft act and annotations, together with appropriate preface, introduction and other matter that said committee may consider proper, to be printed and distributed.

4. That a sum not to exceed two hundred dollars (\$200) be appropriated to the use of said committee for the printing and distribution of said act.

5. That the Assistant Secretary shall be the Secretary of said committee and aid it in the discharge of its duties.

On motion the resolution was adopted.

Francis B. James, of Ohio: The Committee on Commercial Law has in its hands the draft of an act to make uniform the law of Bills of Lading, but the committee occupied so much time on the Warehouse Receipts Act that it only had about an hour to devote to the Bills of Lading Act. The act is not in the form in which the committee desires to present it to the Conference; therefore, accompanying the report of the draft, the committee desires to recommend the passage of the following resolution :

*Be it Resolved*, By the Commissioners on Uniform State Laws at their annual Conference, held this 28th day of August, 1906 :

1. That Professor Samuel Williston prepare appropriate notes to each section of the draft of an act entitled "Draft of an Act to make uniform the Laws of Bills of Lading."

2. That said draft bill be recommitted to the Committee on Commercial Law to be dealt with, revised and amended, with the aid and assistance of Professor Williston, and that said bill be again submitted at the next Conference for discussion and action.

3. That the Committee on Commercial Law cause said draft and annotations to be printed, with appropriate preface, introduction and other matters that said committee may consider proper; that said committee shall distribute said printed draft bill and invite criticism and suggestion from members of the Conference, carriers, business men, commercial organizations, lawyers, judges, law teachers and law writers.

4. That a sum not to exceed two hundred dollars (\$200) be appropriated for the use of said committee for said printing and publication and the distribution of said draft bill when printed.

5. That it shall be the special duty of the Assistant Secretary to distribute said draft.

I move the adoption of this resolution. The motion was seconded and the resolution was adopted.

Francis B. James, of Ohio: The Committee on Commercial Law has in its hands the draft of an act to make uniform the Law of Partnership. It has reached the committee too late to give it any consideration, but the committee desires to submit the draft to the Conference and asks the adoption of the following resolution:

*Be it Resolved*, By the Commissioners on Uniform State Laws at their annual Conference held this 28th day of August, 1906:

1. That Dean James Barr Ames prepare appropriate notes to each section of the draft of an act entitled "Draft of an Act to make uniform the Law of Partnership."

2. That said draft bill be recommitted to the Committee on Commercial Law to be dealt with, revised and amended, with the aid and assistance of Dean James Barr Ames; and that said bill be again submitted at the next Conference for discussion and action.

3. That the Committee on Commercial Law cause said draft and annotations to be printed, with appropriate preface, introduction and other matters that said committee may consider proper; that said committee shall distribute said printed draft bill and invite criticism and suggestion from members of the Conference, business men, commercial organizations, lawyers, judges, law teachers and law writers.

4. That a sum not to exceed two hundred dollars (\$200) be appropriated for the use of said committee for said printing and publication and the distribution of said draft bill when printed.

5. That it shall be the special duty of the Assistant Secretary to distribute said draft.

I move the adoption of the resolution.

The motion was seconded and the resolution adopted.

Francis B. James, of Ohio: The committee also desires to offer the following resolution and recommends its adoption:

*Be it Resolved*, By the Commissioners on Uniform State Laws at their annual Conference, held this 28th day of August, 1906:

1. That Samuel Williston be and he is hereby employed to draft an act to be entitled "An Act to make uniform the Law of Certificates of Stock," with appropriate head-lines and notes to each section.

2. That the compensation of said Professor Williston shall be five hundred dollars (\$500), payable out of any available funds.

3. That the Committee on Commercial Laws cause to be printed said draft and annotations with appropriate preface, introduction and other matter that said committee may consider proper; that said committee shall distribute said printed draft and invite criticism and suggestions from members of the Conference, commercial organizations, lawyers, judges, law teachers and law writers.

4. That a sum not to exceed two hundred dollars (\$200) be appropriated for the use of said committee for printing, publication and distribution of said draft when printed.

5. That it shall be the special duty of the Assistant Secretary to distribute said draft when printed.

I move the adoption of the resolution.

The motion was seconded and the resolution was adopted.

Francis B. James, of Ohio: The committee has one other resolution to present, viz.:

*Resolved*, That there be appropriated out of any available funds the following:

1. \$500 to Professor Williston for balance of services in connection with the Warehouse Act.

2. Not to exceed \$200 to pay Professor Williston's expense of printing, as per bills to be approved by him.

3. \$250 to Professor Williston on account of services in connection with Bills of Lading Act.



4. \$250 to Mr. Barry Mohun for balance of services in connection with Warehouse Act.

5. \$45 to Dean James Barr Ames for expense of printing.

On motion duly seconded, the resolution was adopted.

William H. Staake, of Pennsylvania: I have a communication which is addressed to me as Chairman of the Executive Committee, on the letter heading of the Great Western Oil Refining and Pipe Line Company, under date of August 28, 1906, signed James H. Davidson, which I will ask the Secretary to read.

The communication referred to was read by the Secretary.

C. F. Libby, of Maine: I move that the communication just read be referred to the Executive Committee with the request that they report thereon at the next annual Conference.

The motion was seconded and carried.

The President: The attention of the Chair is called to the provision of the Constitution with respect to the Treasurer's report, and the Chair would call upon the Treasurer to submit his report.

Talcott H. Russell, of Connecticut: Mr. President and gentlemen of the Conference: I beg leave to submit the following report:

#### REPORT OF TREASURER.

##### *Receipts.*

1905.		
Sept. 6.	From Mr. Francis B. James, Treasurer,	\$1,655.00
Dec. 28.	Share in printing Warehouse Receipts Act as arranged with F. B. James (from American Warehouse Association), . . . . .	100.00
1906.		
Jan. 6.	Comptroller State of Ohio for portion of expense of printing, . . . . .	150.00
Feb. 5.	State of Pennsylvania to pay expenses of National Conference of Commissioners on Uniform Laws, . . .	300.00
		<hr/> \$2,205.00

*Expenses.*

1905.	Amount brought forward, . . .		\$2,205.00
Oct. 5.	Samuel Williston, for preparing Warehouse Act (on account), . . . . .	\$500.00	
Nov. 9.	Tuttle, Morehouse & Taylor Co., printing letter heads, . . . . .	11.07	
24.	Amasa M. Eaton, postage and express, . . . . .	21.70	
Dec. 28.	The Gibson & Perin Co., for printing Bill of Sales and Warehouse Receipt Act, . . . . .	331.00	
1906.			
Jan. 10.	Jones & James, postage from Oct. 1, to Dec. 31, 1905, . . . . .	21.40	
10.	The Gibson & Perin Co., express, . . . . .	17.60	
Mar. 9.	The Gibson & Perin Co., binding 50 copies Bill of Sales Act in cloth, . . . . .	16.50	
May 10.	Dando Printing Co., 500 pamphlets on Uniform State Laws, \$118.50 Expressage to Providence, . . . . . 1.60 Expressage to Cincinnati, . . . . . 2.62	122.72	
18.	Glendenning B. Groesbeck, to pay for envelopes (\$0.75), stamps (\$9.68), . . . . .	10.43	
June 18.	Amasa M. Eaton, postage and express, . . . . .	15.00	
July 5.	Francis B. James, cash expenses trip to New York to meet Commissioners on Uniform State Laws, . . . . .	55.00	
30.	John Hinkley, for printing, postage and clerical expenses connected with sending out circulars and reports, . . . . .	16.41	1,138.83
	Balance on hand, . . . . .		<u>\$1,066.17</u>

TALCOTT H. RUSSELL, *Treasurer.*

August 28, 1906.

The President: The Chair appoints as a committee to audit the accounts of the Treasurer, W. O. Hart, of Louisiana, and Walter George Smith, of Pennsylvania, and this report will be handed over to them by the Treasurer, together with the vouchers, and they will please report as soon as possible.

Charles Thaddeus Terry, of New York: I offer the following resolution:

That it is the sense of this Conference that in no case should any act to make uniform the law on any subject be submitted to the Conference at any of its meetings unless the Commissioners shall have had a copy of such proposed act mailed to them and

to each of them, addressed to their last known residence or office, at least six weeks prior to the date of such meeting.

The resolution was seconded and adopted.

Edward W. Frost, of Wisconsin: The well known retiring disposition of my friend from Pennsylvania makes it proper that someone else should call attention to the exceedingly good work done by that state in contributing towards the expenses of its Commissioners to this Conference. Many states make no appropriation whatever, even for the expenses of its Commissioners, and I think each of us ought to highly resolve that we will lay this matter, or cause it to be laid, before our respective legislatures and endeavor to see whether the example of Pennsylvania cannot be followed.

The President: The Chair earnestly seconds what has been stated by Mr. Frost, and hopes that every member will bear the matter in mind and do what he can in his own state to accomplish so desirable an end. An excellent way to secure it is through the Bar Associations of each state.

William H. Staake, of Pennsylvania: In that connection I would like to remind the Commissioners from many of the states that the report of the Executive Committee this year contains positive promises of the governors of many of the states that they would, in response to the circulars sent out, call up the subject in a message to their legislatures.

Talcott H. Russell, of Connecticut: Now that we have a live Secretary, I suppose he will correspond with the proper persons on this subject and endeavor to secure concerted and appropriate action in regard to the matter.

The President: Doubtless he will do so.

Charles F. Libby, of Maine: I should like to inquire to whom the members of the Conference should apply for extra copies of the printed proceedings of our last Conference. I need one very much to attach to my report to our legislature.

The President: The Chair has some copies in his possession which he will be very glad to distribute so long as they last, and he will see that the gentleman from Maine gets one.

William H. Staake, of Pennsylvania : The Chairman of the Executive Committee has several extra copies also.

Charles W. Smith, of Kansas : I suppose that you have sufficient copies of the By-laws and Constitution so that each of the new members may get one ?

The President : They are contained in the printed reports of our proceedings.

John C. Richberg, of Illinois : I think the new members should receive a copy of last year's proceedings.

The President : I think I have sufficient copies to give each of the new members one, and I will do so.

W. O. Hart, of Louisiana : I move that the Secretary be instructed to send a copy of last year's proceedings, if he can get hold of them, to each new Commissioner, and that hereafter copies of the proceedings of the preceding Conference be sent to each Commissioner that is appointed, and that the Constitution and By-laws be printed each year with the proceedings.

John C. Richberg, of Illinois : I would amend the latter part of that motion by providing that the Constitution and By-laws be printed separately and sent out by the Secretary.

W. O. Hart, of Louisiana : I accept the amendment.

The motion, as amended, was then duly seconded and carried.

W. O. Hart, of Louisiana : Mr. President, the Auditing Committee begs leave to report that it has examined the Treasurer's accounts, audited the vouchers, and approves of the report submitted by him.

On behalf of the Auditing Committee, I therefore move that the Treasurer's report be approved and placed on file.

The motion was seconded and carried.

John C. Richberg, of Illinois : As the man said in Congress when he was the last to be recognized by the Speaker, I move to adjourn.

James Barr Ames, of Massachusetts : I second that motion.

The President: Before adjourning, I desire to call attention to one or two articles of our Constitution and ask that the members give heed to them.

(The President read article 4, entitled "Duties of Members.")

Now, before putting the motion, I wish to congratulate the members on what has been accomplished at this meeting. The Chair feels that we have taken a great step forward. This has been a great meeting. More Commissioners have been present than at any former meeting. Let us take it as an augury of our success in the future and let us hope that each succeeding meeting will be better than the last.

The Conference then adjourned without day.

CHARLES THADDEUS TERRY,  
*Secretary.*

## ADDRESS OF THE PRESIDENT.

BY

AMASA M. EATON,  
OF PROVIDENCE, RHODE ISLAND.

### *Fellow Members of the Conference :*

Ever since I was honored five years ago by being elected as your President, it has been with pleasure that I have greeted you with an annual address.

This year it is not only, as before and always, my pleasure thus to address you, it is also my duty to do so, under article VI of the Constitution we adopted last year as follows :

“ The President shall open each annual Conference with an address, in which he shall communicate such changes in the statute laws of each state as tend to promote uniformity of legislation in the United States, and also any matters of interest concerning subjects of legislation, as to which uniformity may seem practicable and desirable, as well as any matters of general interest relating to the work and aims of the Conference.”

The past year has been a memorable one in the march towards uniformity in national legislation. The railroad rate bill, the pure food bill, the meat inspection bill and the naturalization bill have become laws, and are all pregnant with great results in the future.

The railroad rate bill enlarges the meaning of “ transportation ” so that it “ shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.” Without mentioning them, it will be seen that this includes private car and pipe lines as well as elevators. It

provides that all transportation that shall be furnished shall be just and reasonable. It shall be uniform in the sense that there shall be no discrimination ; that all shall pay the same rates for the same service.

Free passes are forbidden in interstate commerce except in certain enumerated cases, subject to the penalty of a fine to be paid both by the common carrier and the person using such free pass.

After May 1, 1908, no railroad company shall transport in interstate commerce any article, except timber and the manufactured products thereof, " manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect," unless necessary and intended to be used in the conduct of its business as a common carrier.

Any common carrier shall, upon application, furnish upon reasonable terms switch connections with any lateral branch line of railroad or private side track, and shall furnish cars without discrimination. All charges, rates and fares are to be filed with the Commission and conspicuously posted along the carrier's lines, and no changes can be made without thirty days' notice, both to the Commission and the shipper, unless with the consent of the Commission for good cause shown.

The names of the several carriers which are parties to any joint tariff shall be specified therein. Copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the act shall be filed with the Commission.

Anything done or omitted to be done by a corporation common carrier under this act, which, if done or omitted to be done by any director, officer, receiver, trustee, lessee, agent or person acting for or employed by such a corporation would constitute a misdemeanor, shall also be held a misdemeanor committed by such corporation and shall subject it to like penalties except as in the act they are changed. All rebates, concessions and discriminations are forbidden, and any breach of this

provision made knowingly shall subject any such person to a fine and to imprisonment, and any person, corporation or company knowingly accepting or receiving any such rebate or concession is also made subject to punishment.

After hearing upon complaint made and finding that any rates charged are unreasonable, the Commission may determine and prescribe what rates are reasonable, and may prescribe maximum rates in such cases. The Commission may also determine what is a reasonable maximum charge for any services rendered to any common carrier by the owner of any property transported. Provision is made for application to the United States courts to carry out the orders of the Commission, and they may be enforced in such courts by writs of injunction or other proper process, and either party may appeal to the Supreme Court of the United States, but no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission, shall be granted, except on hearing after not less than five days' notice to the Commission, and any appeal therefrom must be taken within thirty days. Provision is also made for a rehearing by the Commission. The Commission has power to require annual reports from all common carriers subject to the act, full particulars being stated as to what these reports shall contain, and the Commission may prescribe a uniform system of accounts and the manner in which such accounts shall be kept.

The Commission shall at all times have access to all accounts, records and memoranda kept by common carriers subject to this act, and it shall be unlawful for such common carriers to keep any other accounts, etc., than those thus prescribed, with suitable provisions for penalties upon breach of such provisions.

And, finally, the Interstate Commerce Commission is enlarged so as to consist of seven members with terms of seven years, each to receive ten thousand dollars compensation annually, not more than four of whom shall be appointed from the same political party.



The Pure Food Act, as it is called in brief, is an act to prevent the manufacture, sale or transportation of adulterated, misbranded provisions or deleterious foods, drugs, medicines and liquors, of course within the limits of the powers of Congress under the Constitution.

Sections 7 and 8 prescribe what shall be deemed to be adulteration and misbranding for the purposes of the act.

The act prohibits interstate commerce, etc., in any article of food or drug so adulterated or misbranded, the penalty being a fine or imprisonment or both. It prohibits the introduction of any such adulterated or misbranded article into any state, etc., from any other state, etc., or from any foreign country, subject to like penalties, with a proviso excepting articles intended for export packed according to the specifications of the foreign purchaser if in conformity with the laws of his country.

The Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, and examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, to determine whether they are adulterated or misbranded, with an opportunity to be heard by anyone found to be dealing in such adulterated or misbranded goods. If it appears that the provisions of this act have been violated, the facts shall be certified to the proper United States district attorney, who shall then prosecute the offender without delay.

No dealer shall be so prosecuted when he can establish a guaranty signed by the wholesaler, jobber or manufacturer from whom he purchased such articles, to the effect that the same are not adulterated or misbranded within the meaning of this act. In such case such party shall be subject to prosecution, fine, etc.

Provision is also made for the punishment of those introducing any articles into the United States that are thus adulterated or misbranded or are otherwise dangerous to the health of the people of the United States or are forbidden

entry into or sale in the country in which they are made or from which they are exported, or are otherwise falsely labeled in any respect, and their delivery into this country is forbidden.

It will be seen at once what a powerful influence towards uniformity throughout the country will be at work as to purity of foods and drugs. The friends of this act are of opinion that it will drive out of commerce much of the adulterated and misbranded stuff that is now being sold.

But it is not to be wondered at, that as the result of conflicting interests, the act has certain imperfections. Too many provisos have been added, some of them evidently in the interests of adulteration and misbranding. See, for instance, section 8, under "In the case of food" at the end of "second" "or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilid, or any derivative or preparation of any of such substances contained therein," after the word *substances*, there should be added "or of any other poisonous or habit-forming drug," so that the whole would read, "or any derivative or preparation of any of such substances or of any other poisonous or habit-forming drug contained therein."

And on the same page, section 8, under subsection fourth, proviso second, defining *blend*, the words "not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only" should be omitted, as they are clearly intended to legalize the practices of the makers of artificial whisky, who adulterate and flavor their artificial product to imitate the natural product.

Notwithstanding these and other faults, the act is a model of brevity and conciseness. Its definitions could well be taken as the basis of definitions of adulterations and misbrandings for a Uniform Pure Food Law. With the adoption of this law, it would seem that the time has come for us to take action, and I therefore recommend that our Committee on Purity of Articles of Commerce be now authorized to draw or cause to

be drawn a Uniform Pure Food Law, for our recommendation for adoption by the states of the union. Many state pure food laws are long, prolix and full of unnecessary detail. They conflict with each other, and now is the time for a Uniform Pure Food Law.

The national act errs in not incorporating the broad basic principle of the English Food and Drugs Act that the purchaser shall receive the character, kind and quality of food product or drug asked for, or, to state the principle even more broadly, that every article of commerce shall be sold for what it is. Labels on goods, like witnesses on the stand, should be required to state the truth, the whole truth and nothing but the truth.

Every food and liquid product sold should, therefore, be so labeled as to show the character and quantity of each constituent, and if any constituent be added, the quantity added should be stated. It is not meant by this that the constituent added should be otherwise designated than by its own well known name. For instance, if milk be added, that fact should be stated, without mentioning what milk contains, *i. e.*, water, fat, casein, sugar of milk, etc. But a manufactured food, like chocolate, should be so labeled as to show how much chocolate and sugar it contains and how much dried milk, if any, has been added.

Like the Pure Food Act, the Meat Inspection Act is so drawn as to comply with the requisite of the Constitution conferring power upon Congress to legislate only over interstate commerce, etc. It cannot apply therefore to meat or meat products sold within the state where produced. But public opinion has become so aroused that undoubtedly the government certificate of inspection will be insisted upon in all cases, even by purchasers in the state where the killing or packing is done.

In brief, without attempting an analysis of the whole act, it provides for inspection by the national government of all meats and meat products used in interstate commerce, etc.

Inspectors cannot be denied admission at any time and they have authority to regulate all sanitary conditions. Every article sold must bear a label or tag with the words "Inspected and passed, U. S." with the date of inspection, if canned.

We must remember that the opposition to inspection and proper branding and labeling of meat and food products has come principally from the dishonest agencies that were profiting by dishonest practices. What is surprising, however, is that all honest business men do not see that proper branding and labeling will in the long run benefit their business. Without taking the high moral stand that everything should be sold for just what it is, but taking the stand that honesty is the best policy, even in its lowest sense, they should see that their mercenary interests will be promoted in the long run by such legislation.

The law in England compelled importers of goods from Germany to mark their goods "Made in Germany," it being the expectation that this would check the importation of German goods. But the German makers improved the quality of their goods, until now the brand "Made in Germany" is a certificate of good quality, and the sale of German goods has increased.

Many of the silversmiths and goldsmiths of England as well as of this country resisted the passage of laws requiring correct branding of their wares, but the invariable result of such laws properly enforced is that such wares are bought in reliance upon the hall-mark or brand, without further inquiry into the percentage of gold and silver they contain, while buyers avoid such wares if unbranded, whatever the representations made as to their composition.

Uniformity in the naturalization of foreigners is now in sight, through the adoption by Congress of the new law. A Bureau of Immigration and Naturalization is established, whose duty it shall be to register a personal description of every alien coming into this country. A certificate is then issued to such person, which he must produce when he declares

his intention of becoming a citizen of the United States. These certificates are printed on safety paper, such as is used for bonds and bank notes, with consecutive numbers, and duplicates are kept on file in Washington and other safeguards against fraud and counterfeiting are used. No educational test is required before an alien can be admitted to citizenship, but he must be able to speak the English language.

An Employers' Liability Act, applicable in interstate commerce, etc., has also passed Congress. It seeks to establish the principle that in accident cases the plaintiff may recover, even though he may have been guilty of contributory negligence which was slight if that of the defendant common carrier was gross. It also seeks to establish the principle, "All questions of negligence and contributory negligence shall be for the jury."

The constitutionality of both is open to the most serious doubt.

I venture to suggest a field of usefulness as yet unoccupied by this Conference. It is well known that the study of crime—criminology and penology—has of late years assumed great importance and is destined to assume still greater importance in the still greater study of the improvement of human living. But the proper study of criminology and penology, as well as of the improvement of our criminal law, rests upon statistics. We must have accurate statistics in order to carry on scientific study of these subjects. The Census Bureau of the United States is now established upon a permanent basis and it can carry on the continuous work without which these statistics cannot be obtained. But a comparison of statistics can only be made when gathered in different states by the state authorities according to some uniform system, and at present there is no such system. Not only must there be such uniformity of system between the states, but there must also be uniformity or conformity with the system carried on in the Census Bureau. Perhaps the most important field in which there should be such uniformity is that of vital statistics. The census law

makes it the duty of the Census Bureau to make an annual report on births and deaths covering the statistics of such states and cities as have registration laws and enforce them. Laws of this character now exist in about half the states of the union, but many are defective and deficient, and so carelessly enforced that they furnish too unreliable data for use. I venture to suggest the propriety of the creation of a standing committee on vital statistics, whose duty it shall be to prepare or to cause to be prepared uniform laws for the registration of births and deaths, acting with the co-operation of the Census Bureau. I think it would be well if the consideration of this subject be referred to our Executive Committee, to report thereon at this meeting, or if the time be too short, then to report thereon at our next Conference.

“Under our form of government, all legal provisions on the subject of mortality and vital statistics must be left to the individual and independent action of the states or cities, and while some such provisions exist in many of the states and in most of the larger cities, they have been adopted at different times without reference to any uniform plan. The result is that they differ widely in their requirements and in the amount of statistical data afforded by the records which they secure. A good many of them have been futile from their inception, because the proper fundamental principles were not observed.” By S. N. D. North, Director of the Census in “Mortality Statistics, 1900 to 1904.”

During the year 1905 five states passed laws for the registration of births and deaths, namely, California, Michigan (for births only), Nebraska, Pennsylvania and Utah. Many of these are good laws, but they are not uniform, and therefore in comparing their statistics and in deducing results from them distinctions must always be made. In my opinion, we should move in the matter and procure uniform legislation in the collection of statistical data.

There is still another field in which it would seem that we can co-operate with the Census Bureau. At the last session of Congress a law was adopted directing the Census Bureau to compile and publish decennial reports embodying judicial

statistics, the statistical data of crime. Mr. North, the director of the census, writes me that preparation for this work has brought sharply to the attention of the bureau the variations and anomalies that exist in the penal codes of the several states. The bureau is now engaged in the compilation of a digest and it will show plainly these inconsistencies and incongruities. This will direct public attention to the lamentable discrepancies existing in the penal codes of the several states. Here, again, it seems to me that we should have a standing committee on penal codes, whose duty it shall be to prepare, or to cause to be prepared, uniform laws concerning the collection of statistical data of crime, and acting with the co-operation of the Census Bureau. In making these suggestions, I am not proposing the formulation of any law under which statistics are to be collected for the government of the United States. I am proposing the formulation of uniform laws under which these statistics shall be collected by the state census authorities, and in order that there may be no discrepancies between the work of the national census bureau and the state census bureaus, there should be cooperation between the two. I think it would be well if this subject be also referred to our Executive Committee, to report thereon at this meeting, or if the time be too short, then to report thereon at our next Conference.

The trend towards uniformity of legislation, in national as well as in state affairs, is illustrated by two great movements that have arisen during the last year, one culminating in a National Insurance Convention, the other in a Divorce Congress.

The insurance convention was called because of the extraordinary disclosures of wrongful insurance methods made public by the hearings before the Armstrong legislative committee of New York, the idea being suggested to President Roosevelt by Governor Johnson, of Minnesota, through Thomas D. O'Brien, commissioner of insurance of that state. The convention met in Chicago February 1, 1906, and included in all about one hundred persons—governors, attorney-generals

and commissioners of insurance of the states and territories of the union, as well as the President and the members of the Committee on Insurance of this Conference who were also invited to attend.

It was thought by the callers and members of this convention that the enactment by Congress of an insurance code for the District of Columbia would furnish a model and tend to prevent abuses in life insurance in the future, that might serve as a basis for a law to be adopted by the various states, thus securing uniformity without federal regulation.

The bill introduced in Congress by Hon. Butler Ames was taken as the basis of such course and was explained to the convention by Mr. Ames.

The convention appointed a committee of three attorney-generals and twelve commissioners of insurance, together with the President and the members of the Insurance Committee of this Conference, as advisory members, to prepare for submission to the Conference, at a later meeting, a draft of a bill to be recommended to Congress for the regulation of insurance in the District of Columbia.

At a meeting of this committee held in Chicago March 20, 1906, Messrs. Russell and Richberg attending as members of the Insurance Committee of this Conference, various sub-committees were appointed to prepare bills, including standard forms of insurance policies, to report at a meeting to be held in St. Paul August 22, 1906.<sup>1</sup>

<sup>1</sup>Upon the day so appointed this committee met and remained in session three days. Your President and Commissioners Libby, Russell, Richberg and Williams attended the meetings as advisory members thereof. Provisions were adopted covering the various subjects submitted to sub-committees, with the exception of "Conversion of Stock into Mutual Companies" and "Temporary Stock Plan," which subjects were referred to Frederick H. Nash, who is now one of our members as well as a member of this committee, with instructions to prepare bills along the lines suggested by the committee.

The following resolution was adopted:

"The committee reiterates its approval of the general scope of the so-called Ames bill, now pending in Congress, recognizing, however, the



The Convention itself is to meet in Washington, District of Columbia, October 2d, 3d and 4th, next.

The Divorce Congress that met in Washington last February furnishes still another illustration of the prevalent tendency towards uniformity of legislation.

In response to the invitations sent out by Governor Pennypacker, of Pennsylvania, to the governors of the various states, upon the adoption of a resolution to that effect, passed by the legislature of that state, the governors of forty-two states appointed delegates to a National Congress on Uniform Divorce Laws. South Carolina and Mississippi were the only states that did not appoint delegates, and of these South Carolina grants no absolute divorce whatever. It is not generally understood, however, that this state has a well developed system of divorce from bed and board, more properly known as legal separation, and it might very appropriately take part in this movement, in order to help bring about uniformity in the laws governing this important branch of the divorce law.

It is, of course, well known that no absolute divorces are obtainable in South Carolina, the consequence being that those who are bound to be divorced and can afford it, go to some other state, acquire a domicile, prefer their petition and are divorced. I have heard lately of a resident of South Carolina twice divorced in some other state, now again living in South Carolina, married the third time. In defense of the South Carolinian theory of indissoluble marriage, it is said that those who are divorced and who marry again are under social ban. Sometime, however, the conflict may come squarely in

necessity for many amendments to the bill as it appears in its present form. This committee, however, believes that a complete code of insurance for the District of Columbia is necessary, and that the establishment of an insurance department under the Bureau of Commerce and Labor, to be so fully equipped that its co-operation could be secured by any state in the matter of making examinations of insurance companies, would be of the greatest possible public benefit."

This committee is to report to the National Insurance Convention at its session in Washington, District of Columbia, next October.

the Supreme Court of the United States, under the "full faith and credit" clause of the Constitution, if the courts of South Carolina refuse recognition of a decree of divorce against one of its citizens that the Supreme Court will recognize as valid.

It is not consonant with the spirit of American civilization and the dictates of common sense to refuse divorce when the object of the marital relationship completely fails.

It is not surprising that the denial of absolute divorce, no matter what the circumstances may be, has had its natural corollary in South Carolina in the adoption of a law limiting the amount of property a man, leaving lawful issue, may leave to his mistress or to his illegitimate children.

See 11 Stats. at Large, S. Car. 1703, p. 226, § 9, under which the settlement "by deed of gift or by legacy or devise, or by any other way or means whatsoever," upon any bastard child to the prejudice of lawful issue is void, if in excess of one-tenth part of the real or personal estate of the settler.

Following the development of this doctrine, we find in 5 Stats. at Large, S. Car. 1795, p. 271, § 4, that any gift, settlement or conveyance by any ways or means whatsoever for the use and benefit of a woman with whom a man lives in adultery or of his bastard child or children, in excess of one-fourth part thereof, shall be null and void as to such excess. See further Rev. Stats. S. Car. 1878, p. 425, § 14, Gen. Stats. S. Car. 1882, p. 524, § 1785, and lastly the code of S. Car. 1902, § 2487.

Substantially the same law may also be found cited in *Cusack vs. White*, 2 Mills 279 at 292; s. c. 12 Am. Dec. 669, as in force in 1818. See also *Denton vs. English*, 3 Brev. 147; *Canady vs. George*, 6 Rich. Eq: 103, and *Bishop on Marriage and Divorce*, § 59, ed. of 1891.

But contrary to what is generally understood, South Carolina does recognize and regulate separation from bed and board. See *Smith vs. Smith*, 29 S. E. 227 (1898), holding that "suit money," as the court calls it, and alimony, can be granted in a suit for separation, under the South Carolina

Code, § 402, and Rev. Stats., § 2247. In *Wise vs. Wise*, 38 S. E. 794 (1901) may be found an examination of the principles of law governing these actions, which are equitable in their nature. The court held that the wife must follow the domicile of the husband, when so requested by him, and was not entitled to alimony because her husband used profane, reproachful and insulting language to her. *Levin vs. Levin*, 46 S. E. 945 (1904) is another late case in this state on separate support for the wife on account of cruelty.

Is it not evident that South Carolina would do well to join in the movement of her sister states towards that interstate comity that would result from uniformity of legislation?

Forty-one states and the District of Columbia were actually represented in this Divorce Congress that met in Washington last February, and among their delegates were leading members of the Judiciary and Bar and church dignitaries, as well as governors, United States senators and representatives, and several women who are ministers and doctors. In the many states having Commissioners on Uniform State Laws, the governor most naturally appointed them as delegates to this congress, with the result that a large number of our members were delegates and a majority of the Congress were men learned in the law.

Upon organizing, by invitation, the Congress in a body called upon the President of the United States. The next morning the Congress heard the delegates from the Inter-Church Conference. At their request, one of their number, Mr. Francis Lynde Stetson, the well-known lawyer, presented the recommendations of the Inter-Church Conference as to legislation in their opinion to be desired on marriage and divorce and they were almost identically the provisions of the act drawn by this Conference. In closing his remarks Mr. Stetson said:

“ This document, therefore, represents the expression of the American Bar Association, of the State Commissioners on Uniform Laws, of the Inter-Church Conference, representing

over twenty millions of people, and of the great church with its vast membership in this country which would have no divorce whatever. That recommendation we ask you to consider as worthy of your acceptance and your recommendation."

It should certainly be a proper source of satisfaction to us thus to find that our labors are recognized and appreciated.

The Congress then adopted rules of order and appointed committees, the most important being a Committee on Resolutions, to which, under an excellent rule, all resolutions introduced were referred.

To facilitate the work of the Congress the delegates from Pennsylvania had most efficiently made all the necessary arrangements for the meetings of the Congress, and the success of the undertaking was in large measure due to the ability and thoroughness with which their secretary provided for everything with unceasing tact and urbanity. The delegates from Pennsylvania submitted, as the result of several months of study and preparation by them, printed copies of the laws of every state and territory upon the subject of divorce, a declaration of principles underlying the divorce problem and indirectly the marriage question, which, as the delegates recognized, lies at the root of the evils in question. They submitted also an outline of a Uniform Divorce Law or code. Under the rule adopted, all these were referred to the Committee on Resolutions and were reported back for action from that committee, after due consideration and sundry changes.

It is but simple justice to repeat here, in the words used in an article on this Congress in the *Yale Law Journal* for June, 1906, in speaking of the chairman of this committee, that "the results arrived at were in a large measure due to his unusual qualities, both of mind and character. For tact, graciousness of manner, breadth of view, subordination of his own personal convictions in the interests of society, for earnestness of purpose, for absolute honesty and fairness, not only to the Congress, but to his own conscience, and for his comprehensive grasp of all the questions involved, a stronger man

could hardly have been found to lead the debates and discussions of the Congress."

These declarations of principles were adopted by the Congress, with but few changes and additions, and as adopted, are as follows:

## RESOLUTIONS

### ADOPTED BY THE NATIONAL CONGRESS ON UNIFORM DIVORCE LAWS

At its Sessions at Washington, District of Columbia, February 19-22, 1906.

#### I. AS TO FEDERAL LEGISLATION.

1. It is the sense of the Congress that no federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

#### II. AS TO STATE LEGISLATION.

1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or the defendant had a bona fide residence.

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years' residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose.

Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years' residence

should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

4. An innocent and injured party, husband or wife, seeking a divorce should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing and provided for in states where no such rights exist.

5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation; and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired; but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited.

6. While the following causes for annulment of the marriage contract for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for:

A.—CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

*B.*—CAUSES FOR DIVORCE— *a. v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Wilful desertion for two years.
6. Habitual drunkenness.

*C.*—CAUSES FOR LEGAL SEPARATION, OR DIVORCE, *a. m.*

1. Adultery.
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the union, or in a federal court, or in some of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

8. A decree should not be granted *a. v. m.* for insanity arising after marriage.

9. In those states where desertion is a cause for divorce, it should never be recognized as a cause unless it is wilful and is persisted in for a period of at least two years.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

11. Anyone named as co-respondent should in all cases be given an opportunity to intervene.

12. Hearings and trials should always be before the court, and not before any delegated representative of it; and in all

uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case.

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

14. A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages or the impossibility of access by the husband has been proved.

16. Each state should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: "If an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code.

Before adjourning the delegates from Pennsylvania, William H. Staake, Walter George Smith and C. LaRue Munson, with Vice Chancellor John R. Emery, of New Jersey, were appointed a sub-committee to frame a Uniform Statute on Divorce for submission to the full Committee on Resolutions. They have completed their work and it is in print, entitled "Proposed Uniform Statute relating to Annulment of Marriage and Divorce." It will be considered by the Committee on Resolutions at their meeting in St. Paul on September 1, 1906, and will then be submitted to the Divorce Congress.



The decision in the divorce case of *Haddock vs. Haddock*, in the Supreme Court of the United States, of April 16, 1906, is one of the most surprising decisions ever rendered by that august court. In an article on this decision by Professor Beale in the *Harvard Law Review* for June, 1906, he says: "It has remained for the present court to astonish the whole Bar of the country."

The court held that the New York courts are not compelled, under the "full faith and credit" clause of the Constitution to give effect to a decree of divorce granted in Connecticut to a husband who had left his wife in New York and had acquired a domicile in Connecticut, the wife not appearing in the Connecticut suit and the separation, as the New York court found, having occurred by the fault of the husband, although the Connecticut court had found the contrary. The New York decree, from which appeal had been taken, granted divorce and alimony to the wife, notwithstanding the Connecticut decree; and this judgment was affirmed. The opinion was written by Mr. Justice White, the Chief Justice and Justices Peckham, McKenna and Day concurring. Mr. Justice Brown wrote a dissenting opinion and Justices Harlan, Brewer and Holmes concurred in his dissent, and Mr. Justice Holmes wrote a short supplementary opinion.

Contrary to the general impression, this decision will not affect the law or the practice of the great majority of states which now give effect to all decrees of divorce where the libellant or petitioner was domiciled within the state granting the decree. No state but New York is certainly affected by the decision, and Professor Beale says, in his excellent analysis of this case, to which I am indebted, that it is tolerably clear that New York, Pennsylvania and the Carolinas are the only states affected by it.

But in order to give jurisdiction over divorce proceeding, the decision in this case still makes domicile of the libellant in the state where the libel is filed a prerequisite, as distinguished from mere residence, and personal jurisdiction over the libellee

is also necessary, or the constitutional provision, the "full faith and credit" clause will not apply.

This personal jurisdiction over the libellee may be acquired (1) by actual appearance in the suit; (2) by actual domicile within the jurisdiction; (3) even where the libellee has left the jurisdiction in which the parties lived together as husband and wife, he or she is still subject to the divorce courts of that jurisdiction, which is called the "matrimonial domicile."

"The effect of the decision is therefore confined to a case where the libellant abandoned the libellee wrongfully, left the matrimonial domicile and acquired a new domicile, not shared by the libellee, in the state of forum."

"The scope of this doctrine is, however, broader than it might seem, since the fault of the libellant in leaving the libellee becomes a jurisdictional fact. To grant the original decree, the court must have found the libellant faultless in the matter; but in the second process the original libellee is likely to be the only party represented, and his (or her) side alone being heard, the second court will find the original libellant in fault, and therefore the court which rendered the original decree to have been without jurisdiction. This was the course of events in the case at bar." (The same was true in *Atherton vs. Atherton*, 181 U. S. 155.)

"This novel and extraordinary doctrine has never before been suggested by a civilized court or author. The Supreme Court of the United States is entitled to the credit of originality at least."

The reasoning of the court is thus summarized by Professor Beale:

"For a valid divorce it is necessary that the libellant should be domiciled in the state which grants the divorce; it is also necessary that there should be personal jurisdiction over the libellee in order that it should be enforceable under the "full faith and credit" clause of the Constitution; but if there is no such jurisdiction over the libellee the divorce will be valid where granted."

"If Mr. Justice White is right in requiring domicile of the libellant for jurisdiction, he is wrong in regarding jurisdiction over the libellee as essential. If he is right in saying the decree is valid in Connecticut, he is wrong in saying it is not

binding in New York. His reasoning is certainly novel, and it is certainly wrong. Can his conclusion nevertheless be supported? Is the decision right that some jurisdiction over the person of the libellee is requisite?"

"The difficulty on theory with Mr. Justice White's doctrine of the requirement of personal jurisdiction lies in the very nature of divorce. It is not a personal right of the parties. The express assent of both parties to a decree will not justify a court in granting the decree. The decree does not operate *in personam*, and the jurisdiction required is merely a jurisdiction *in rem*. In order to satisfy the requirement of due process of law, the absent party must be given reasonable notice and an opportunity to be heard; but jurisdiction over him is not necessary."

In conclusion Professor Beale said:

"The object of the majority was a praiseworthy one—to make objectionable divorces less easy to obtain. But in pursuit of that object they have made a decision which will have an opposite effect. For it gives an easy road to divorce where the parties are agreed in desiring it, since the libellee by appearing and suffering default can render the proceedings valid, and it thus assists collusive divorces. On the other hand, it makes it impossible to secure a divorce that will everywhere be recognized in the one case where all persons admit that a divorce should be granted, that is, where the wife elopes with an adulterer. For if she goes to another state, and the injured husband obtains a divorce in her absence, the state of her new domicile need give no credit to the divorce, unless it finds that the fault is with her; and as her husband is not present, and she therefore has the entire control over the evidence, she will be able to convince the court of her own innocence and her husband's fault. The decision then is opposed to reason, to authority and to morality; but it will stand until the question is raised again. As Mr. Justice Holmes said, in his dissenting opinion, civilization will not come to an end meanwhile."

In the annual address by the President, Hon. Edward Kibler, at the meeting of the Ohio State Bar Association at Put-in-Bay, July 10, 1906, after giving an introductory account of the formation and work of this Conference, particu-

larly our Negotiable Instruments Law, our Uniform Sales Act, etc., he said :

“The preparation by this general Conference of exhaustive codes of the law upon the various subjects mentioned, ‘concerning which there is universal need of uniformity in the interests of commerce throughout the country,’ is a notable achievement, not only because there have been employed in the work eminent experts, the highest legal learning which the country affords, years of critical consideration of each subject, not only because it has produced forms of urgent statutory laws which meet the approval of the commerce and of the state legislatures of the country ; not only because it brings to the business of the states beneficent order out of chaos and uncertainty, but because it demonstrates the wisdom of committing legislation into the hands of those who are the best qualified. This body of eminent men, not elected, but appointed upon merit, . . . without a vestige of legislative power or authority, by the sheer worth of their accomplishments as to matters of vital importance to the welfare of the whole people—are, in fact, legislating for the federal good—are in a sense greater than Congress itself. As was pointed out by Judge Simeon E. Baldwin (XVII, *Harvard Law Review*, 403) :

‘The existence of this American Conference as a permanent body was one of the causes that encouraged the Netherlands to call the first Hague Conference. Its work ought to be forwarded by all who are interested in advancing the unity of American jurisprudence.’ ”

In this connection let me tell you of evidence, a knowledge of which has only lately come to me, showing the recognition of the high value of the work we are engaged in by our late President, Judge Brewster. Upon returning to his home from one of the last of our Conferences that he attended, he remarked that he was now engaged in the most important work he had ever undertaken. Considering the wide range of Judge Brewster’s important activities during a long and useful life, this shows the high estimate he placed upon our work. I wish that every member of this Conference recognized, as did Judge Brewster, the dignity and importance of our work.

What Judge Baldwin calls, in the passage cited, "the unity of American jurisprudence" can be aided in many different ways. By the very terms of the existence of the Commissioners attending our Conferences, we are limited to the promotion of such unity through the adoption by the state legislatures appointing us, of the uniform laws we draft and recommend to our legislatures, respectively, for adoption. But the cause of unity, which is but another name for uniformity of legislation, can be promoted in another way. As to all subjects that, by the terms of the Constitution, are within the jurisdiction of Congress, national legislation can be enacted that will bring about uniformity in the federal courts. Thus the passage of the Pure Food Law by Congress, at its last session, is a great step towards uniformity in setting up a standard that the states can follow in state laws that will still further promote uniformity.

Our Committee on Purity of Articles of Commerce will render a great public service by watching state legislation on this subject to guard against a departure from uniformity by divergent state legislation, as well as by drafting uniform laws to be recommended for adoption by the state legislatures.

There is still another way in which uniformity can be aided. Let Congress adopt our Negotiable Instruments Law as the law covering negotiable instruments in all cases arising in the federal courts or arising under interstate commerce.

With all the activity thus shown to have been displayed during the last year in uniform legislation, there is one field in which nothing has been done. For the first time since the adoption of the Negotiable Instruments Law no state has adopted it. But this is principally accounted for by the fact that it has been the year in which but few states have had sessions of their legislatures, and they are states that had already adopted our law. I conclude by submitting, as I have each year, an analysis of the cases since our last Conference that have arisen in the courts of the states that have adopted the law.

## DECISIONS ON NEGOTIABLE INSTRUMENTS LAW.

*Rouse vs. Wooten*, 53 S. E. 430, North Carolina (March 20, 1906). A surety on a note is not entitled to notice of dishonor under the N. I. L., Rev. 1905, § 2239, nor is such a surety an indorser under N. I. L., § 2213, but he is primarily liable, within N. I. L., § 2342 (Crawford Annotated Negotiable Instruments Law, §§ 160, 113, 3).

*Commercial National Bank vs. Zimmerman*, 77 N. E. 1020, 185 N. Y. 210 (Ct. App. N. Y., May 15, 1906). Where a demand note was endorsed without consideration, for the accommodation of the maker, and its payment was secured by the deposit of certain securities, and two years after the making of the note the plaintiff complained to the indorser of its non-payment, and afterwards wrote twice a year that the maker was in default in the payment of interest, but no steps were taken to charge the indorser, by presentment of the note for payment until more than three years had elapsed, the presentment was not within a reasonable time, under the N. I. L., 1897, c. 612, §§ 4, 131.

This case abrogates the distinction heretofore made in New York between notes or bills payable on demand and bearing interest and those payable on demand merely. See *Merritt vs. Todd*, 23 N. Y. 28, and *Parker vs. Stroud*, 98 N. Y. 379.

*Mayers vs. McRimmon*, 53 S. E. 447, North Carolina (March 27, 1906). The holder of a draft, in the absence of proof of indorsement by the payee, is not a bona fide purchaser for value, under the N. I. L., Rev. 1905, §§ 2198, 2208, 2340 (Crawford Annotated Negotiable Instruments Law, §§ 79, 98, 6).

*Hibbs vs. Brown*, 98 N. Y. Supp. 353 (Supreme Court, April 6, 1906). Bonds issued by a joint stock association, secured by a trust deed and payable to bearer, are negotiable, under Laws, 1897, c. 612, §§ 20, 22, although by their express terms the stockholders of the association are free from individual liability for payment of the bonds and the interest thereon, liability being confined to the security and to the

assets of the association, such limitation not restricting the liability to a particular fund.

Where defendants negotiated through brokers a sale of a bond paying the party presenting the bond the proceeds of the sale, and thereafter on return of the bond to them by the purchaser (because payment of the interest coupons was refused, on the ground that the bond and coupons had been stolen), transmitted to the purchaser another bond of the same issue and tenor in lieu of the one returned, they were holders in due course, under Laws, 1897, c. 612, § 97, having, in legal effect, repurchased the bond and coupons by trading therefor a bond the title to which was not disputed.

*Waddell vs. Hanover National Bank*, 97 N. Y. Supp. 305, 48 Misc. 578 (Supreme Court, November, 1905). The plaintiff sued to recover on a draft for \$1500, "400 c. A. R. L. No. 3362, via A. R. L. B. L. direct." These words, under the usual custom of business, charged the payee with knowledge that a certain number of cases had been shipped by a certain line, and that the bill of lading went direct to the payee. *Held*: As the draft contained an unconditional order to pay a sum certain in money, it was negotiable, under Laws 1897, c. 612, §§ 20, 22, and it does not indicate that the amount of the draft is to be paid only from the proceeds of the consignment.

Where the drawee of a negotiable draft had paid it to a holder in due course, the drawer claiming to have made a shipment to the drawee, the drawee cannot recover back the amount paid on discovering that the goods were never shipped to him.

*Schlesinger vs. Schultz*, 96 N. Y. Supp. 383 (December 8, 1905). Under §§ 23, 26, of the Negotiable Instruments Law, a note payable to the order of the maker "on demand after date" is a note payable on demand.

Under § 131, a note payable on demand must be collected within a reasonable time. When a note was indorsed by a third party and was not negotiated within ten days after its

date, presentation for payment within ten months was held to be sufficient to hold the indorser. Under s. 133, a note payable at a bank is properly presented for payment at the bank, although the bank is in the hands of a receiver. It need not be presented to the receiver personally.

First National Bank of City of Brooklyn *vs.* Gridley, 98 N. Y. Supp. 445 (Supreme Court, April 20, 1906). Where one of the payees of a note, made payable to the payees jointly, indorsed it and mailed it to the maker, who then altered the note by placing his own name in the place of one of the payees and by erasing the word "jointly." *Held*: That under Laws 1897, c. 612, § 33, the maker had not authority to complete the note by filling the blanks, that under § 71 an indorsement of all the payees was necessary to give good title to the transferee, and that under §§ 204, 205, there was no implied warranty, on the part of the payee indorser, extending to the changed condition of the note after it parted from her possession.

"It is necessary in commercial transactions that the rules of liability of parties to negotiable paper should be fixed and certain. It is better that such rules be arbitrary than that they lack precision and certainty."

The defendant, who was one of the payees and accommodation indorsers on a note, indorsed another note "for renewal" and mailed it to the maker before maturity of the first note. The maker inserted his own name in the place of the name of one of the payees, and after maturity of the first note, took it up by discounting the second note. The discounting bank had no notice, until the time of the discount, that the defendant had indorsed the second note. *Held*: That the indorsement by the defendant before the maturity of the first note did not amount to a waiver of notice of dishonor of the first note, under Laws 1897, c. 612, § 180.

National Bank of Newport *vs.* Snyder Manufacturing Company, 107 App. Div. 95, New York (July, 1905). A note purporting to be of the defendant corporation, signed by its



president and treasurer, known by the plaintiff to be accommodation paper, without proof of execution by the president and treasurer, under authority from their corporation, does not bind the corporation.

(The N. I. L. is not mentioned. See § 39.)

*Kerby vs. Ruegamer*, 107 App. Div. 491, New York (September 29, 1905). Under § 39 of the N. I. L., the makers of a negotiable promissory note signing as "trustees," without further disclosing their principal, the payee knowing who it was, are held not to be individually liable.

*Salen vs. Bank of the State of New York*, 97 N. Y. Supp. 361 (Supreme Court, January 19, 1906). An agent was authorized to indorse checks received from customers payable to the principal, and to deposit them in a designated bank for collection for the principal's account. He indorsed some such checks in his principal's name and deposited them with a broker as margins on a personal speculative stock account. The broker deposited the checks in a bank, which received them, and paid the proceeds thereof to him, in good faith. *Held*: The indorsements made by the agent were not forgeries under Laws 1897, c. 612, § 42, and therefore the bank receiving these indorsed checks and paying the proceeds to the broker in good faith is not liable to the principal as for a conversion of the checks.

*Oriental Bank vs. Gallo*, 98 N. Y. Supp. 561 (Supreme Court, April 27, 1906). A holder of a check under a forged indorsement indorsed it to a bank and received the amount thereof, which amount was paid to the bank by the drawee, the plaintiff, which, on discovering the forgery, sued to recover the amount paid. *Held*: That by his indorsement of the check, the indorser warranted the genuineness of the prior forged indorsement, and on discovery of the forgery is liable to make good the amount he has received on the check.

(The N. I. L. of 1897, c. 612, was not cited. See § 42, and *Tolman vs. Am. National Bank*, 48 At. 480 or 22 R. I. 462.)

*Jamieson vs. Heim*, 86 Pac. 165 (July 20, 1906). A draft was made payable to A. B., which came into the possession of another man of the same name as the defendant. He procured an introduction to a bank which then cashed the draft for him. He deposited part of it in this bank and a draft or check upon it came to the plaintiff in due course. It was held that the purchaser took it free of equities, under § 52 of the Washington N. I. L. (Crawf. Ann. N. I. L., § 42).

*People's National Bank vs. Schepflin*, 62 Atl. 333, New Jersey (November 13, 1905). A note executed by a married woman for her husband's accommodation, unenforceable in New Jersey because of Gen. St., p. 2017, § 5, prohibiting liability of a married woman as surety, or upon the default or liability of another, is not made valid by the N. I. L. (P. L. 1902, p. 583, Crawf. § 50).

*Hover vs. Magley*, 96 N. Y. Supp. 925 (Supreme Court, November, 1905). In an action on a note of a married woman and her husband, an answer stating that the note was without consideration as to the wife, being given for a pre-existing debt of the husband, was held to be a good defense, following *Sutherland vs. Mead*, 80 N. Y. Supp. 507, and *Roseman vs. Mahony*, 83 N. Y. Supp. 749, notwithstanding the N. I. L. of 1897, c. 612, §§ 51, 52 and 55.

See contra, *Brewster vs. Schrader*, 26 Misc. Rep. 480, (1899). This question will have to be carried to the Court of Appeals in New York before the uniformity which is the object of the N. I. L. can be secured, by reversal of this case. See the case of *Sutherland vs. Mead*, previously commented upon adversely in my address as President in 1904.

*Rogers vs. Morton*, 95 N. Y. Supp. 49 (March, 1905). In an action by the indorsee of a negotiable promissory note, against the maker, who was also the payee and indorser, a plea, demurred to, alleged that the note was never duly negotiated or discounted for value. *Held*: That this is the statement of an ultimate fact, and not of a conclusion of law, and was therefore admitted to be true by the demurrer.

An allegation in another plea that the plaintiff is not a bona fide holder in due course, also demurred to, was *held* to be a conclusion of law, and therefore not admitted to be true by the demurrer. See §§ 52, 54, 60, 90, 91, ch. 612, Laws 1897.

*Westheimer vs. Helmbold*, 109 App. Div. 854, New York (December, 1905). Under the N. I. L., § 55, when the defendants, who were accommodation indorsers on a negotiable promissory note for \$300 on which \$100 was advanced, returned it to the maker to procure a more satisfactory indorser, and it was then destroyed by the indorsers and the maker, the defendants are still liable as accommodation indorsers for the \$100 advanced.

*Welch vs. Kukuk*, 107 N. W. 301, Wisconsin (May 8, 1906). Where one of two defendants, makers of a note, voluntarily paid the interest thereon before maturity, although by its terms the interest was not due until maturity and the payee voluntarily consented to extension of the time of payment of the note, without regard to the time when the interest was paid, which payment of interest in advance and agreement for renewal was made without the knowledge or consent of another maker, the other defendant who signed the note without consideration, for the accommodation of the first defendant, this accommodation maker was not released from liability by reason of such extension.

The N. I. L. is not cited in the opinion, although in force in Wisconsin. See Laws, Wis., 1899, c. 356, §§ 1675-55 and 1678. *Crawf. Ann. N. I. L.*, §§ 55, 130 (but a portion of § 130 is omitted in the Wisconsin law, § 1678).

*Viets vs. Silver*, 106 N. W. 35, Supreme Court, North Dakota (December 22, 1905). A negotiable promissory note has no validity between the parties unless delivered. The N. I. L. is not cited, although in force in this state. See Laws 1899, § 30 (*Crawf. Ann. N. I. L.*, § 60.)

*Chemical National Bank vs. Kellogg*, 75 N. E. 1103, New York (November 21, 1905). Where a note is dated and made

payable in the State of New York, an indorsement in blank thereon is presumed, under the common law and under Laws 1897, p. 731, ch. 612, § 76, to have been made in New York, and one discounting the note in good faith can rely on such indorsement.

*Meuer vs. Phenix Nat. Bk.*, 88 N. Y. Supp. 83 (May 13, 1904). Under Laws 1897, ch. 612, §§ 79, 112, 323, 324, 325, the title to a check payable to a specified person passes by delivery without indorsement. The transfer of a check by the payee, by delivery without indorsement, destroys its negotiability, and the transferee takes merely his transferors' title, subject to any equity between him and the drawer.

The payee of a check, given to discharge an indebtedness due to her, transferred it without indorsement for consideration, and the transferee presented it at the bank upon which it was drawn, which certified it. *Held*: The bank was liable, although it did not know who was the owner of the check when the certification was made. See also 86 N. Y. Supp. 701 (January, 1904).

*Schlesinger vs. Lehmaier*, 99 N. Y. Supp. 389 (June 13, 1906). Under § 91 N. I. L., a bank discounting a note with knowledge that it is usurious, is not a holder in due course.

*Elias vs. Whitney*, 98 N. Y. Supp. 667, Supreme Ct. (April 27, 1906). Where a mere inspection of a check showed that it had been altered, a purchaser thereof took with notice of the infirmity, and was not a holder in due course, under Laws 1897, c. 612, § 91.

*Quimby vs. Varnum*, 76 N. E. 671, Massachusetts (January 6, 1906). Upon failure of the maker, the defendant, to pay his note at maturity, an irregular or anomalous indorser paid it to the indorsee, who struck out his own indorsement and delivered the note to the irregular indorser. Five years afterwards he sold the paper to the plaintiff. *Held*: That, having paid the note, the irregular indorser had a cause of action against the maker, but not upon the note. See the N. I. L. Rev. Laws, c. 73, §§ 80, 81, 67, 31 (Crawf. Ann. N. I. L., §§ 113, 114, 80, 202).

*Keene vs. Behan*, 82 Pac. 884, Washington (November 17, 1905). Under the N. I. L. (Sess. Laws, 1899, p. 350, ch. 149, *Crawf.*, § 94), the title of a payee of a negotiable instrument is defective where the only consideration for the note is accrued interest on a loan previously made at a rate of interest forbidden by Sess. Laws 1899, p. 128, ch. 80, § 2.

*Ford vs. Brown*, 88 S. W. 1036, Tennessee (March 31, 1905). Under the N. I. L. Acts 1899, p. 150, ch. 94 (*Crawf.*, § 95), it is provided that to constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Where certificates of deposit payable to C., "trustee" and "trustee of B. F.," were wrongfully indorsed before maturity, by C., it was *held* that the certificates themselves gave actual notice to the indorsee that the paper represented a trust fund, and obligated such indorsee to inquire into the right of the trustee to dispose of it under the above section.

*Broadway Trust Co. vs. Manheim*, 95 N. Y. Supp. 93 (May, 1905). A holder of a negotiable instrument in due course takes it free from any defenses available to prior parties among themselves, under Laws 1897, ch. 612, § 96, p. 732.

*Lassas vs. McCarty*, 84 Pac. 76, Oregon (January 30, 1906). Under the N. I. L. (Bell & Cotton, § 4459, *Crawf. Ann. N. I. L.*, § 96) one who bought a second mortgage note for \$1500, paying therefor \$1000, can recover, although the note and mortgage were obtained by fraud, the purchaser having had no actual knowledge of the infirmity or defect, nor any knowledge of such facts that his action in taking the instrument amounted to bad faith.

*Rockfield vs. First Nat. Bk. of Springfield*, 4 Ohio L. Rep. 290 (May, 1906). Notwithstanding the provisions of the N. I. L., §§ 3173 h, 3173 i, 3173 k and 3174 g (*Crawf.* §§ 113, 114, 116 and 160), one who puts his name on the back of a

negotiable instrument, not otherwise a party to it, is a maker or surety, and not an indorser.

It is impossible to follow with approval the reasoning by which the plain provisions of the N. I. L. are ignored, in order to follow what the law was in Ohio before the adoption of the N. I. L., to the sacrifice of the uniformity the law is intended to bring about. It is to be hoped the case will be appealed and reversed.

*Gardner vs. Pitcher*, 109 N. Y. App. Div. 106 (November 15, 1905). An indorser is jointly and severally liable with the maker, and a holder need not exhaust his remedy against the maker, before suing the indorser.

(See § 116 of the N. I. L., although the act is not cited.)

*Morgan vs. Thompson*, 62 Atl. 410, New Jersey (November 20, 1905). Since the passage of the N. I. L. (P. L. 1902, p. 596, § 68, *Crawf.*, § 118), evidence is admissible, even between indorsers, to show that as between themselves they have agreed, as to the liability, otherwise than appears upon the note.

*State Bank vs. Kahn*, 98 N. Y. Supp. 858, Supreme Ct. (March 2, 1906). Under Laws 1897, c. 612, § 118, as respects one another, indorsers are liable, *prima facie*, in the order in which they indorse, and under § 201, subd. 4, a valid tender of payment made by a prior party discharges one secondarily liable on the instrument.

Where the defendant, who was an accommodation indorser and the last indorser on the note sued on, and he was not a judgment debtor when judgment was rendered against the other parties to the note, which judgment was satisfied by a surety on the appeal bond of such judgment debtors, such payment operated to discharge the defendant's liability on the note.

*Reed vs. Spear*, 94 N. Y. Supp. 1007 (July 6, 1905). Under the N. I. L., ch. 612, § 160, notice of dishonor must be given to charge an indorser, although presentment to the one primarily liable was excused, under § 143 through his death,

and no personal representative had been appointed (see § 136). Under §§ 136 and 167, "reasonable diligence" was exercised by the holder, who went two or three times to the office of the administrator of the deceased maker, to make presentment, but was unable to find him there, or at a nearby railroad station, the seat of his other place of business interests at a time when he might be expected to be there, and hence an indorser became liable, on receiving sufficient notice of dishonor. *Held further*: That notice of dishonor, served at indorser's store, by delivery thereof to his wife, who acted as his assistant, is sufficient notice.

*Albany Trust Co. vs. Frothingham*, 99 N. Y. Supp. 343 (June 1, 1906). The payee of a protested note cannot recover of an indorser who did not receive notice of protest until three months thereafter, the notice of protest having been sent to him by mail addressed to a place at which he did not live and which was not his last known address.

(See § 179 N. I. L., not cited in the opinion.)

*McCormick vs. Shea*, 99 N. Y. Supp. 467. Under the N. I. L., § 201, the intentional cancellation of the signature of one who is secondarily liable on a negotiable promissory note with the consent of the holder releases such person secondarily liable, although there be no consideration for such cancellation.

*Baldwin vs. Daly*, 83 Pac. 724, Washington (January 10, 1906). Under the N. I. L. 1899, § 122 (Crawf. Ann. N. I. L., § 203), the release of a surety on a note cannot be shown by parol; the word "renunciation" being used in the sense of release, it must be in writing.

*Colonial Nat. Bk. vs. Duerr*, 95 N. Y. Supp. 810 (November 10, 1905). When an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce payment thereof according to its original tenor (ch. 612, § 205, p. 745, Laws 1897).

A note made in Ohio and indorsed in New York is decided under the law of New York as to the indorser.

*Hecht vs. Shenners*, 105 N. W. 309, Wisconsin (October

24, 1905). The material alteration of a note after execution and delivery renders it wholly void, except in favor of a holder in due course not connected with the alteration, under Laws 1899, p. 681, c. 356 (Crawf. Ann. N. I. L., § 205).

Van Buskirk *vs.* State Bk. of Rocky Ford, 83 Pac. 778, Colorado (December 4, 1905). A drawee of a check is not liable to the holder until it accepts or promises to pay in writing, under Laws 1897, c. 64, §§ 126, 185, 143 and 189 (Crawf. Ann. N. I. L., §§ 210, 321, 240 and 325).

This action was based upon a parol promise (by telephone) to pay the check. But as a check is a bill of exchange drawn on a bank and payable on demand, it is a species of bill, and although it need not be presented for acceptance to render the parties thereto liable, yet, as it does not operate as an assignment of any part of the fund to the credit of the drawer, with the bank, and the drawee bank is not liable to the holder unless and until it accepts or certifies the check, and as, except as otherwise provided and there is no exception, the provisions of the N. I. L. applicable to a bill of exchange payable on demand, apply to a check, the provision applicable to a bill of exchange that acceptance or certification must be in writing, applies also to a check.

Farmers and Merchants Bk. *vs.* Bk. of Rutherford, 88 S. W. 939, Tennessee (June 3, 1905). An indorser of negotiable paper does not warrant to the drawee the genuineness of the maker's signature, but such warranty only extends to subsequent holders in due course of trade.

The drawee of a check, by accepting it, makes himself a guarantor thereof (see Crawf., § 323).



**REPORT**  
**OF THE**  
**EXECUTIVE COMMITTEE.**

*To the President and Commissioners attending the Sixteenth Annual Conference of Commissioners on Uniform State Laws :*

Your Executive Committee would respectfully report :

At the Fifteenth Annual Conference of Commissioners on Uniform State Laws, held at Narragansett Pier, Rhode Island, August 18, 19, 21 and 23, 1905, the Constitution and By-laws were adopted, by the provisions of which it was made "the duty of Commissioners from each state at least thirty days before each annual Conference to report to the Chairman of the Executive Committee the enactment of any laws or the filing of any judicial decisions in the state from which they are appointed, upon the subject of uniform legislation in the United States."

The Chairman of the Executive Committee not having received any reports from the Commissioners, on July 31, 1906, addressed a letter to each Commissioner asking for a report of the enactment of any laws or the filing of any judicial decisions since the last annual Conference of the Commissioners. To this inquiry, replies were received from :

The Hon. Edward Kent and the Hon. Everett E. Ellinwood, of Arizona.

The Hon. John F. Davis and the Hon. Charles Monroe, of California.

The Hon. R. G. Pitkin, of Colorado.

The Hon. Talcott H. Russell, of Connecticut.

The Hon. A. B. Browne, of the District of Columbia.

The Hon. Robert W. Williams and the Hon. John C. Avery, of Florida.

The Hon. Peter W. Meldrim, of Georgia.

The Hon. John C. Richberg, of Illinois.

The Hon. John Morris, of Indiana.

The Hon. Emlin McClain, of Iowa.

The Hon. John D. Millikin, of Kansas.

The Hon. J. R. Thornton, of Louisiana.

The Hon. H. E. Hamlin and the Hon. Charles F. Libby,  
of Maine.

The Hon. Stevenson A. Williams, of Maryland.

The Hon. James Barr Ames, the Hon. George W. Weymouth and the Hon. George E. Gardner, of Massachusetts.

The Hon. Wesley W. Hyde and the Hon. George W. Bates,  
of Michigan.

The Hon. W. S. Pattee, of Minnesota.

The Hon. R. H. Thompson, of Mississippi.

The Hon. Henry E. Burnham and the Hon. Ira A. Chase,  
of New Hampshire.

The Hon. Frank Bergen and the Hon. John R. Harden, of  
New Jersey.

The Hon. Ernest W. Huffcut and the Hon. Charles Thaddeus Terry, of New York, whose report is annexed hereto and marked "B."

The Hon. William E. Cushing, the Hon. Francis B. James and the Hon. S. S. Wheeler, of Ohio.

The Hon. J. C. Strang, of Oklahoma.

The Hon. Walter George Smith, of Pennsylvania.

The Hon. Amasa M. Eaton, of Rhode Island.

The Hon. Henry E. Young, of South Carolina.

The Hon. L. B. French, of South Dakota.

The Hon. J. P. Lamson, of Vermont.

The Hon. R. T. Barton and the Hon. Archer A. Phlegar,  
of Virginia,

stating that no laws had been enacted and no judicial decisions rendered in their respective states since the last annual Conference of the Commissioners, with the following exceptions. (In a majority of the states there had been no meeting of the legislatures during this period.)

The Hon. Aldis B. Browne, of the District of Columbia, stated that a joint resolution proposed in the Senate for a constitutional amendment giving Congress power to enact uniform laws on divorce had been adversely reported and indefinitely postponed.

The Hon. John C. Richberg, of Illinois, stated that at the annual meeting of the Illinois State Bar Association the report of the Committee on Uniform State Laws and Negotiable Instruments Law was unanimously adopted, requesting the united effort of the Association to cause this law to be enacted at the next meeting of the General Assembly, January 1, 1907. The committee was continued with special instructions to use every effort in the name of the Association to obtain passage of the law.

The Hon. John Morris, of Indiana, reported :

" Since I have been a member of the Commission, our legislature has not been in session. I hope to have the Negotiable Instruments Act introduced at the session next winter and shall do all I can to secure its passage. I shall also endeavor to have the laws with reference to Sales and Warehouse Receipts, when approved by the Commissioners, adopted by our legislature. I hope to get Governor Hanley interested in these bills and to induce him to say something about them in his message to the legislature."

The Hon. Emlin McClain, of Iowa, reported :

" The Negotiable Instruments Act seems to be working satisfactorily in the state, for no questions have been presented to the Supreme Court involving any doubt as to its construction."

The Hon. J. R. Thornton, of Louisiana, reported that the legislature which recently adjourned refused to adopt the Torrens Registration System, a bill for which had been prepared and presented at the instance of the Louisiana delegation of Commissioners on Uniform State Laws. The report says : " This is to be regretted, but cannot be helped. We think it will, eventually, however, become the law in Louisiana."

The Hon. Ira A. Chase, of New Hampshire, reported :

"In 1901, as a member of the state Senate, I was influential in persuading that body to pass the Negotiable Instruments Act, so called, but the House did not approve and, consequently, killed it."

The Hon. John Garland Pollard, of Virginia, reported as follows:

"In reply to your letter of July 31st, I report that section 85 of the Negotiable Instruments Law has been amended by the insertion of the words underscored below:

"Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due *or becoming payable* on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday." (1906, p. 366. In force June 13, 1906.)

"The following is the syllabus of the case of Trustees of American Bank of Orange *vs.* McComb, decided by the Supreme Court of Appeals of Virginia, June 14, 1906. It will be observed that sections 52, 53 and 124 of the Negotiable Instruments Law are affected thereby.

"Acts 1897-98, pp. 896, 910, c. 866, § 124 (Va. Code, 1904, p. 1455, § 2841a), provides in subsection 52 that a holder in due course is one who takes the instrument when it is complete and regular on its face, before maturity, for value, and without notice of any infirmity; and subsection 53 expressly provides that the holder of an instrument payable on demand, negotiated an unreasonable length of time after maturity, shall not be regarded as a holder in due course. *Held:* That, as only one class is excepted from the class of bona fide holders under subsection 53, a trustee under a deed of trust for creditors is a holder in due course.

"In an action on a note, defendant claimed a material alteration consisting of the words, 'payable with interest.' The note was partly printed and partly written, and the words 'payable with interest' were in the same handwriting as other written portions and were not interlined, but written on a blank space after the words 'value received.' *Held:* That

the note was 'complete and regular' on its face, within Acts 1897-98, pp. 896, 910, c. 866, § 124 (Va. Code, 1904, p. 1455, § 2841a), defining a holder in due course."

The Hon. Charles E. Shepard, of Washington, reported that there had been no session of the legislature since August, 1905, and that:

"The following are the only decisions construing the Negotiable Instruments Act, which is the only one of the uniform acts passed in this state:

" 'A person acquiring a negotiable instrument after maturity, or otherwise not in due course, under section 52, is subject to the defense of usury.' (Keene *vs.* Beahm, 40 Wash. . . . unpublished.)

" 'A release by a holder of a negotiable instrument of his rights must be in writing under section 122.' (Baldwin *vs.* Daly, 41 Wash. . . . unpublished.)"

(The report of the Hon. Charles Thaddeus Terry and E. W. Huffcut, of New York, in full is appended to this report.)

The Executive Committee has not received any reports from Commissioners made by them to the governor or legislature of their respective states, save from the Commissioners from Louisiana and Illinois, being copies of their reports to the governors concerning the proceedings of the Congress on Uniform Divorce Laws held at Washington, District of Columbia, February 18 to 23, 1906.

The members of the Executive Committee, under the power conferred by article VII of the Constitution, arranged for the Sixteenth Annual Conference of Commissioners to take place in the Capitol building at St. Paul, Minnesota, August 25, 27 and 28, 1906, immediately preceding the meeting of the American Bar Association, and in co-operation with the officers of the Conference of Commissioners, who are *ex-officio* members of the committee, sent to each Commissioner a notice as follows:

"*Dear Sir* :—The Sixteenth Annual Conference of Commissioners on Uniform State Laws will be held at the State Capitol, St. Paul, Minnesota, beginning Saturday, August 25,

1906, at 10 A. M., and continuing thereafter until the meeting of the American Bar Association at the same place on Wednesday, August 29, 1906.

"In addition to the annual address by the President, Amasa M. Eaton, the Conference will continue the consideration of the "Sales Act." This act, drafted by Professor Williston, after full consideration last year, was referred to the Committee on Commercial Law, and coming to the Conference this year after final consideration by that Committee, it is hoped that it will be adopted for recommendation for its passage by the various legislatures of the states of the union.

"The Warehouse Receipts Act, drafted by Professor Williston and Barry Mohun, Esq., fully considered last year, will also come recommended for our adoption.

"The draft of a uniform law concerning bills of lading by Professor Williston, and of a uniform law concerning partnership, by Professor Ames, dean of the Harvard Law School, will also be submitted at this Conference.

"The various committees will report upon the subjects referred to them respectively.

"The Executive Committee again most respectfully, but more strenuously than ever, urges the attendance of every Commissioner at this important Conference, as it is to consider and act upon matters of the greatest importance to commerce. Whatever tends to increase of commerce, and especially to increase of commerce among the states, tends to unite our people and to blend them into a harmonious whole and to make us a more powerful nation. In all cases where a Commissioner is unable to attend, he is particularly requested to confer with the other Commissioners from his state, and to make sure that his state is properly represented by at least one Commissioner, and if he finds that no Commissioner from his state can attend this Conference, he is particularly requested to confer with the member of the American Bar Association from his state, who is a member of its Committee on Uniform State Laws, urging him to attend this Conference. But without waiting for such an invitation, we wish it to be known that every member of that committee is particularly invited and requested to attend our Conferences. Article X of our Constitution provides that 'the members of the Committee on Uniform State Laws of the American Bar Association shall be privileged to attend the annual Con-

ference of Commissioners, and to participate in the discussions of the Conference, but without the right to vote.'

"All members of the American Bar Association are also invited to attend our meetings and to take part in discussing the important acts we are considering. All these gentlemen can assist us in our work by taking a more active interest in securing the appointment of Commissioners in their respective states, or wherever the members already appointed fail to attend our Conferences. They can help us even more by co-operating with our committee on that subject in securing the appointment of Commissioners in their respective states where there is no provision yet made for their appointment. It is a work of great and national importance in which we are engaged, and there should always be at least one Commissioner from each state in the union in attendance at our Conferences."

A notice of the assembling of the Conference was also printed in connection with the notice sent to the members of the American Bar Association.

The Executive Committee calls the attention of the members of the respective standing committees to the provision of section 14 of the By-laws printed upon page 14 of the proceedings of the Fifteenth Annual Congress, that

"Each committee whose province is some branch of law shall report annually what, if any, recommendations it desires to make; what progress has been made in securing the adoption of bills within its province, already recommended by the Conference, and what difficulties have been met in securing the adoption of such bills. It shall be the duty of the Executive Committee to call the attention of the Chairman of each such committee to this rule a reasonable time before each annual meeting of the Conference."

In pursuance of these directions, the Executive Committee addressed a letter to the Chairman of each committee, requesting a statement of the work of the committee since the annual Conference of 1905.

Commissioner James Barr Ames, of Massachusetts, who, as senior member of the Committee on Marriage and Divorce, succeeded our lamented fellow-commissioner, the Hon. Walter S. Logan, of New York, as Chairman of the committee,

promised to send a report as soon as possible, but he had not been notified of any meeting of the committee. Mr. Logan was the delegate from New York to the Divorce Congress at Washington and took an active part in its proceedings.

Commissioner Ames further reported that the Committee on Congressional Action had no statement to make of its action since August 18, 1905, and that he had received no notice that he was the Chairman of that committee.

Commissioner John C. Richberg, of Illinois, reported that :

"As Chairman of the Committee on Torrens System and Registration of Title to Land, I have the honor to report that it has been impracticable for the committee to have a meeting since the adjournment of the Conference last August. I, however, sent a circular letter to the six other members of the committee requesting their views upon the subject. I received responses from four, two of which stated that they were unaware that they had been made members of the committee. From two of the members of the committee I have not received any reply. I shall, however, prepare a report embodying the views of the majority of the committee as ascertained, and be ready to present the same to the different members of the committee as soon as I can call a meeting of the committee at St. Paul, so as to be able to make a report upon this subject to the Conference.

"In view of the opinions expressed, it is not expedient for me, as Chairman, to draw up a report at this time, as it has not been possible for me at the present time to ascertain the views of the majority of the committee. I should judge, however, that a majority of the committee would deem it advisable to postpone the committing of the Conference to this system until its workings can be more completely demonstrated, which, in this country, is in an experimental stage in the states of Illinois, Massachusetts, Colorado, Minnesota, California and Oregon. In the latter two states no progress has been made, although in force some two years, and in Colorado and Minnesota very few have taken advantage of this system. Neither has it met with that indorsement by the Bar and public in Illinois that was prophesied for it by those who stood as its sponsors. In the nine years of its existence the number of applications filed in Cook County (in which Chicago is situ-



ated) was 2088, and certificates issued, 5345, though we have over 900,000 separate and distinct lots, tracts or parcels of land, each of which is assessed separately and taxes levied upon such assessment annually."

Commissioner William E. Cushing, of Ohio, as senior member of the Committee on Wills, Descent and Distribution, since the death of the Chairman, Commissioner Edwin Burritt Smith, of Illinois, and as Chairman of the Committee on Conveyances, states :

"I ceased to be a Commissioner some little time since by the expiration of my term of office. I am not aware of any work being done during the year by either of the committees I was put on, or anything having been referred to them by the Conference."

Commissioner Francis B. James, of Ohio, reported for the Committee on Commercial Law, as follows :

"During the course of the last year I have delivered four addresses upon this subject, as follows : Ohio State Bankers' Association, Kentucky State Bankers' Association, Cincinnati Chapter of the American Institute of Bank Clerks and Ohio State Board of Commerce.

"I have been carrying on considerable correspondence with various interests upon this subject. I have also communicated frequently with Professor Samuel Williston, Mr. Barry Mohun and Mr. Albert M. Reid, vice-president of the American Warehousemen's Association.

"A joint meeting of the Committee on Warehouse Receipts of the American Bankers' Association, the executive committee of the American Warehousemen's Association and the Committee on Commercial Law of the Commissioners on Uniform State Laws met in New York city on May 3, 1906.

"Revised drafts of the following codes will be submitted to the meeting, to wit : Sales Code and Warehouse Code.

"New codes on the following subjects will also be reported at the meeting, to wit : Bill of Lading Code and Partnership Code.

"An effort will be made to have experts employed to draft a code governing Stock Certificates. When we have a code on stock certificates, we will then have codified all the branches

of the law touching instruments regarded as negotiable by the law merchant."

Commissioner Charles F. Libby, of Maine, has prepared a detailed report on Insurance, which will be presented to the Conference.

President Eaton, as Chairman of the Committee on Appointment of New Commissioners, reported :

"In reply to your circular note of inquiry as to the work done by this committee during the last year, I report that the committee has carried on some correspondence with members of the Bar in some of the states that have not appointed Commissioners to our Conference, but have been unable to secure the appointment of any new Commissioners, principally because of the fact that this is the year in which but few legislatures have held sessions."

Commissioner William H. Staake, of Pennsylvania, reported the adoption of a Pure Food Law by Congress and the unusual attention being paid by federal, state and municipal authorities to the protection of the citizens from impure and adulterated food products.

Commissioner Frank Bergen, of New Jersey, reported for the Committee on Uniform Incorporation Law that a report had been prepared which would be submitted at the meeting of the Conference.

No report was received from the Committee on Depositions and Proof of Statutes of Other States. The Executive Committee trusts that the report will be presented when the Conference meets.

The proposed bill on the subject of Uniform Rules by Boards of Law Examiners drafted by Judge George M. Sharp, of Maryland, which was referred to the Executive Committee, did not reach that committee from the Secretary of the Conference, so that no action has been taken upon it.

At the last Conference, a motion prevailed "that the various Commissioners be requested to notify the Secretary as soon as any law recommended by the Conference shall have been adopted in their respective states, and that thereupon the

Secretary shall so inform each of the members of the Conference." If any action has been taken, either by Commissioners or the Secretary under the provisions of this resolution, the Executive Committee has received no notice of such action.

In pursuance of the resolution "that the Executive Committee be directed to memorialize Congress to adopt the Negotiable Instruments Law for the Indian Territory, Alaska and the insular possessions of the United States," efforts were made by the committee to secure such adoption. A memorial was prepared and presented, and a reference made to the proper committee. Conferences were had with the chairman and members of the committee, and assurances were received that favorable action would be had by Congress. The committee regrets that, although there was a favorable report from the committee, the bill failed of passage before the adjournment of Congress.

It is a matter of sincere regret to the committee that so much delay has occurred in the printing and distribution of the report of the proceedings of the annual Conferences. Efforts were made to secure an early publication, but, owing to the strike of the printers and other circumstances, there was more than the usual delay in the appearance of the printed proceedings of the Conference and of the American Bar Association. This delay seriously interferes with the work of the Conference, as the Commissioners have no time between the appearance of the printed proceedings and the next Conference to give proper attention to matters referred to them as individuals or as members of committees. As the Conference has received such liberal financial support from the American Bar Association, it has, as a matter of courtesy and of necessary economy, been glad to act in co-operation with the officers of that association, who generously printed our proceedings in the annual report of that association, and permit us to use the matter for our report. In some measure it is due to this arrangement that the committee has not been able to see to

it, "that the report . . . be placed in the hands of the Commissioners not later than the first of December."

Communications as follows were sent to the governor of each state and territory of the United States :

" PHILADELPHIA, April 17, 1906.

"Hon. \_\_\_\_\_,

" *Governor of the State of \_\_\_\_\_*

" DEAR GOVERNOR :—The meeting of the delegates to the Congress on Uniform Divorce Laws held in Washington, District of Columbia, February 19 to 24, 1906, has increased the interest in the general subject of Uniform State Laws.

" The next meeting of the Commissioners will be held at the state capital in the Capitol building at St. Paul, Minnesota, in August next, preceding the meeting of the American Bar Association on the 29th, 30th and 31st of August, 1906.

" It is desirable that every state in the union should appoint Commissioners on Uniform State Laws who can participate in the annual Conference of Commissioners from the various states. If your state has not already appointed Commissioners, we would respectfully urge that such appointment should be made. Thirty-three of the states and the District of Columbia have appointed Commissioners. I enclose you a copy of the act recommended by the Conference of Commissioners authorizing the appointment of Commissioners. Provision should be made for the payment of the expenses of the Commissioners, as well as for a moderate appropriation by each state to the treasury of the national Conference of Commissioners, to defray the annual expenditures of such Conference.

" May I, on behalf of the officers of the Executive Committee of the Conference of Commissioners on Uniform State Laws, ask that you recommend to your state legislature the passage of an act authorizing the appointment of Commissioners, and that upon such passage Commissioners may be appointed to represent your state.

" Yours respectfully,

" WILLIAM H. STAAKE,

" *Chairman of Executive Committee.*"

The following is a copy of enclosure above referred to :

" For the guidance of those interested in the objects of the Conference of Commissioners on Uniform State Laws in states

where there are no commissioners, after examining the laws under which these commissioners are appointed, a draft of a general act to accomplish the desired end was prepared. This is as follows :

**"AN ACT TO ESTABLISH A BOARD OF COMMISSIONERS FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.**

"It is enacted by the General Assembly as follows :

"SECTION 1. Within thirty days after the passage of this act, the governor shall appoint three suitable persons, and they and their successors are hereby constituted 'A Board of Commissioners for the Promotion of Uniformity of Legislation in the United States.' Any vacancy in said board by resignation, death or however otherwise arising, shall be filled by the appointment by the governor of a suitable person.

"SEC. 2. It shall be the duty of said board to examine the subjects of marriage and divorce, insolvency, the descent and distribution of property, the execution and probate of wills and other subjects upon which uniformity of legislation in the various states and territories of the union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the Commissioners appointed by other states and territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the several states, and generally to devise and recommend such other or further course of action as shall accomplish the purposes of this act.

"SEC. 3. The said Board of Commissioners shall keep a record of all its transactions, and shall at the session of the legislature in each year, and may at any other time, make a report of its doings and of its recommendations to the General Assembly.

"SEC. 4. No member of said Board shall receive compensation for his services, but each member shall be repaid from the state treasury the amount of his actual travelling and other necessary expenses incurred in the discharge of his official duty, after the account thereof has been audited by said board and by the state auditor. The said Board shall keep a full account of its expenditures and shall report it in each annual report.

"Very respectfully submitted by

"WILLIAM H. STAAKE,

*"Chairman of Executive Committee."*

"PHILADELPHIA, April 17, 1906.

"Hon. \_\_\_\_\_,

*"Governor of the State of \_\_\_\_\_."*

"DEAR GOVERNOR:—I have been directed by the Conference of Commissioners on Uniform State Laws to communicate with the governor of each state which is represented in the Conference of Commissioners on Uniform State Laws in reference to provision being made for the payment of the traveling and other expenses of their Commissioners, and also to suggest that each state represented in the Conference of Commissioners on Uniform State Laws should make a moderate appropriation to the treasury of the Conference of Commissioners on Uniform State Laws, to defray the expenses which must be incurred at each annual Conference. To pay the experts who draw our acts, such as the Sales Act, the Negotiable Instruments Act, the Warehouse Receipts Act, etc., we are dependent on contributions, sometimes from business associations, sometimes from the American Bar Association, which has generously given us an annual appropriation of late years out of its residue from the annual dues of five dollars from each of its members, after paying its own expenses. It does not seem right that the sovereign states of this great union should leave the expense of work done for their benefit thus to be paid for by public spirited lawyers who, with no ulterior motive, but animated solely by a desire to improve the law and to render the public a valuable service, are serving as Commissioners without pay, and in many cases are also paying their own expenses. Some of the states have regularly contributed to the payment of these annual expenses, and have also made an appropriation to defray the actual traveling and other expenses of their Commissioners. In order to insure the attendance of Commissioners from all the states at each annual Conference, there should be uniformity on this subject of each commonwealth paying the traveling and other incidental expenses for printing, and so forth, of its Commissioners, and of paying a portion of the expenses which must be incurred by the Conference of Commissioners on Uniform State Laws.

"I would, therefore, respectfully ask that you recommend to the legislature the enactment of legislation which will cover these matters. Yours very respectfully,

"WILLIAM H. STAAKE,

*"Chairman of Executive Committee."*

To these communications replies were received as follows :

From Governor Kibbey, of Arizona, through his private secretary :

"I am directed to inform you that this territory already has a Board of Commissioners 'for the promotion of uniformity of legislation in the United States,' the board comprising three members, but there is one vacancy at present. The members now serving are Hon. Edward Kent, Chief Justice, Phoenix and Hon. E. E. Ellinwood, Bisbee, Arizona. The governor will make an appointment to fill the vacancy at an early day."

Governor Pardee, of California :

"The matters mentioned in these two communications will be given due and proper consideration."

Governor Roberts, of Connecticut :

"The matter of the meeting of the Commissioners on Uniform Divorce Laws at St. Paul, Minnesota, will be brought to the attention of the Hon. Talcott H. Russell, of New Haven, Connecticut, Chairman of our State Commission on Uniform State Laws, who will give the same his attention."

Governor Deneen, of Illinois :

"Replying to your letter of April 17th, which, owing to matters connected with the extra session of the General Assembly of Illinois, I have been unable to answer before today, I have to say that owing to the fact that no fund is provided by this state which could be used for the payment of the expenses of Commissioners, I am unable to appoint delegates to the Congress on Uniform Divorce Laws, to be held at St. Paul, Minnesota, in August next."

Governor Haug, of Indiana :

"Permit me to acknowledge the receipt of your favor of the 17th inst., and in answer to advise you that the General Assembly of the State of Indiana will not convene in regular session until next January. I will give consideration to your suggestion before preparing my biennial message."

Governor Cummins, of Iowa :

"I have yours of the 17th ultimo relative to the appointment of Commissioners from this state to attend a meeting of

delegates to the Congress on Uniform Divorce Laws to be held in St. Paul, Minnesota, on the 29th, 30th and 31st of August, 1906; also your suggestion as to a law for the appointment of these Commissioners and an appropriation to pay their expenses.

"Unfortunately, our legislature is not session, and will not be until after the meeting in August, and therefore, if Iowa is represented it must be represented by Commissioners who will accept appointment without provision for expenses. I will endeavor to find a sufficient number who will be willing to go under these circumstances."

Governor Beckham, of Kentucky:

"Replying to your letters of a few days ago in reference to delegates from this state to the Congress on Uniform Divorce Laws, I would suggest that you correspond with our delegates. The Chairman for this state is Hon. John D. Carroll, Frankfort, Kentucky, and the other members are Senator J. Wheeler Campbell, Paducah, Kentucky, and Hon. R. W. Miller, Richmond, Kentucky. I am quite sure they will give proper attention to any matters you may wish to take up with them."

Governor Blanchard, of Louisiana, through his private secretary, acknowledged receipt and said that attention would be given.

Governor Cobb, of Maine, stated that the letters had been forwarded to Commissioner Libby, Chairman of the Commissioners from that state, and enclosed a copy of his reply, that "The matters referred in his communications have all been taken care of by legislation in this state, except that there is no provision in the annual appropriation 'for a moderate appropriation to the treasury of the Conference of Commissioners on Uniform State Laws to defray the expenses which must be incurred at each annual Conference,' referred to in his letter. It might be wise to have the act enlarged so that those necessary expenses might be provided for."

Governor Gill, of Massachusetts:

"Massachusetts has, for a number of years, had a Commission on Uniformity of Legislation in the States; that this state was represented at the recent Divorce Laws Congress at Washington, and that Massachusetts makes an annual appropriation for the expenses of the Commission."



Governor Warner, of Michigan :

"I will state that our law makes no provision for the expenses of delegates. The legislature will not meet until January, 1907, so that it will not be possible to call the attention of that body to the matter before the meeting of the Congress. I will, however, be glad to appoint delegates. Our state was represented at the National Conference on Divorce Laws and those attending expressed themselves as being very much pleased with the result of the Conference, believing that it will bring about desirable changes in laws relating to this matter."

Governor Folk, of Missouri :

"The matter therein referred to will be given consideration."

Governor Toole, of Montana, through his private secretary, acknowledged receipt and promised "attention."

Governor Mickey, of Nebraska :

"I have this day appointed Hon. Roscoe Pound, of Lincoln, and Hon. John L. Webster and Hon. Ralph W. Breckenridge, of Omaha, to represent the State of Nebraska at the Conference of Commissioners on Uniform State Laws to be held in St. Paul, Minnesota, during the latter part of August, just prior to the meeting of the American Bar Association.

"These are the same gentlemen who represented the state at the Conference on Uniform Divorce Laws held last year, and I have reappointed them for the reason that they are familiar with the work which the Conference has in hand, and therefore in a position to render better service to the state than new appointees would be likely to render."

Governor Higgins, of New York :

"The State of New York has provided for Commissioners for the Promotion of Uniformity of Legislation in the United States, and our State Commissioners attended the Washington Congress on behalf of the State of New York. They are, as your lists indicate, Walter S. Logan, of New York city; Dean Huffcut, of the Cornell University College of Law, Ithaca, New York and Professor Terry, of the Columbia University Law School, New York city."

Governor Frantz, of Oklahoma, through his private secretary, acknowledged receipt of the letters, which would receive attention.

Governor Cutler, of Utah, through his private secretary, stated:

"The governor is in receipt of your recent communications, and I am directed to respectfully inform you that at the next meeting of the legislature, the governor will recommend the passage of an act authorizing the appointment of a Commissioner or Commissioners, to attend the proposed Conference of Commissioners on Uniform State Laws."

Governor Swanson, of Virginia:

"The legislature of Virginia passed an act providing for the promotion of uniformity of legislation in the United States and the following Commissioners have been appointed by Virginia: Hon. R. T. Barton, Winchester, Virginia; Judge Archer A. Phlegar, Christiansburg, Virginia, and Hon. John Garland Pollard, Richmond, Virginia. The legislature has not authorized the appointment of Commissioners to a Congress on Uniform Divorce Laws."

Governor Dawson, of West Virginia:

"I have before me your letter of April 17th, which requests me to appoint delegates to the Conference of Commissioners on Uniform State Laws to be held at St. Paul, Minnesota, in August next; and also that I recommend in my message to the legislature the passage of an act authorizing the appointment of Commissioners, and an appropriation to defray their expenses, and to defray a portion of the expenses of the said Conference.

"There will be no session of the legislature of this state before the meeting of the Commissioners next August. Our next session will be in January, 1907, too late to take the action requested.

"If you so desire, I can appoint delegates who may attend the meeting, and, if desired, I can appoint the same delegates who attended the Congress on Uniform Divorce Laws held in Washington last February."

The Chairman of the committee advised Governor Dawson that the Conference would appreciate his appointment of Com-

missioners and that the delegates who attended the Divorce Congress would be excellent appointments. Later, Governor Dawson appointed Hon. B. F. Meighen, Moundsville; Hon. C. Wood Dailey, Elkins; E. D. Leach, Esq., Moundsville; Hon. Charles McCanic, Moundsville; Rev. John Wier, Buckhannon.

Governor Davidson, of Wisconsin, through his private secretary :

"I am directed by Governor Davidson to acknowledge receipt of your letter dated April 17th, and to state that he will be pleased to appoint delegates to the Congress on Uniform State Laws which is to be held in St. Paul next August. Such delegates, however, will be required to pay their own expenses, as the state has no fund for such purpose.

"In regard to the recommendation which you ask the governor to make to the next legislature of this state, I wish to say that there will be no session until next January, and his term of office expires before such time. However, he is a candidate for renomination, and if he receives it and is elected, he will consider the matter."

The committee has learned with sincere sorrow of the death of Commissioners Edwin Burritt Smith, of Illinois; George E. McNeill, of Massachusetts, who died May 12, 1906; James M. Woolworth, of Nebraska, who died June 16, 1906; Joseph W. Fellows, of New Hampshire; Walter S. Logan, of New York; L. G. Kinne, of Des Moines, Iowa; Thomas B. Wall, of Wichita, Kansas, and J. W. Wright, of South Dakota. Appropriate action will be taken by the Conference with reference to the loss sustained by the death of these gentlemen.

The delegates to the Congress on Uniform Divorce Laws met at Washington, District of Columbia, at the Hotel Willard, February 18 to 23, 1906, forty-one states and one territory being represented. A series of resolutions or declaration of principles which should be embodied in uniform legislation was adopted and referred to the officers and the members of the Committee on Resolutions to prepare a statute for submission at another meeting of the Congress. A sub-committee consisting of Vice-Chancellor Emery, of New Jersey, Walter George

Smith, C. LaRue Munson and William H. Staake, delegates from Pennsylvania, was appointed to prepare the preliminary draft of the statute. This sub-committee has completed the draft, which will be considered by the general committee at a meeting on Saturday, September 1, 1906, at St. Paul, Minnesota, immediately after the adjournment of the meeting of the American Bar Association. A copy of the proposed statute and of the proceedings of the Congress are herewith submitted for the information of the Conference.

Respectfully submitted,

WILLIAM H. STAAKE, *Chairman*,  
FRANCIS B. JAMES,  
PETER W. MELDRIM,  
AMASA M. EATON,  
CHARLES E. SHEPARD,  
TALCOTT H. RUSSELL,  
*Executive Committee.*

REPORT OF NEW YORK STATE COMMISSIONERS UPON THE  
ENACTMENT OF ANY LAWS OR THE FILING OF ANY  
JUDICIAL DECISIONS UPON THE SUBJECT OF UNI-  
FORM LEGISLATION SINCE THE LAST MEETING OF  
THE COMMISSIONERS.

(Appended to Report of Executive Committee.)

The New York State Commissioners upon the uniformity of laws throughout the United States beg to report, in answer to the inquiry of the Executive Committee as to the enactment of any law or the filing of any judicial decision upon the subject of Uniform Legislation, in the year last past, as follows :

Perhaps the most interesting among the decisions touching the Negotiable Instruments Law of New York State, rendered since the last meeting of the Commissioners, are the cases of *Commercial National Bank vs. Zimmerman*, 185 N. Y.

210; and *Chemical National Bank vs. Kellogg*, 183 N. Y. 92; and these are interesting because the opinions contain general statements with reference to uniform legislation. In the former of the two cases it was held that the provisions of paragraph 131 of the New York Negotiable Instruments Law abrogates the former common law distinction between "notes or bills payable on demand and bearing interest" and "those payable on demand merely," as laid down by Chief Justice Comstock of the Court of Appeals in *Merritt vs. Todd*, 23 N. Y. 28, and followed in numerous decisions, including *Parker vs. Stroud*, 98 N. Y. 379.

In the Zimmerman case, Judge Gray, after discussing Mr. Justice Comstock's decision in *Merritt vs. Todd* (*supra*), and referring to the fact that that decision had been followed by numerous other decisions said, in the course of his opinion:

"Judge Comstock followed the doctrine of the English courts, in differentiating notes payable on demand with interest from those payable on demand merely. He sought to give effect, in the former case, to what seemed to be an intention of the parties that, notwithstanding the terms, there should be no immediate demand, and that the time of payment should be future, thus making the instrument a continuing obligation.

"The law being thus settled in this state, the Negotiable Instruments Law was passed, in 1897, as the outcome of a general movement to bring about a uniform law in this country, covering the subject of 'Bills and Notes.' It was a codification of the law and, in the respect which we are considering, it modified the rule as formulated in *Merritt vs. Todd*. It established one rule, which was to be applicable to all cases, that where an instrument 'is payable on demand, presentment must be made within a reasonable time after issue.' No distinction was to be made, as theretofore, when the instrument was an interest bearing obligation. . . . In my opinion, what the legislature intended to accomplish by the provisions of the Negotiable Instruments Law in question was to do away with the distinction between notes or bills, payable on demand, which *Merritt vs. Todd* had created, and to leave the question of their reasonable presentment for payment, in order to charge the parties to them, as one for the determination of the court upon the facts."

In the case of *Chemical National Bank vs. Kellogg*, (*supra*), it was held that an indorsement in blank of a promissory note, dated and payable in the State of New York, is presumed, both at common law and under the statute, to have been made there, and one discounting the note in good faith is entitled to rely upon that presumption. This decision was in a case where a married woman at her residence in the State of New Jersey, indorsed in blank her husband's promissory note, solely for his benefit, the note being dated and payable in the State of New York, where it was discounted in good faith and without notice that the indorser was a non-resident, or that the indorsement was made in another state. The court held, therefore, that she was estopped from denying that her indorsement was a New York contract and from claiming that it was a New Jersey contract, the laws of which latter state do not permit a married woman to become a simple accommodation indorser.

In the course of his opinion, Judge Vann, at page 95, said:

"The business of the country is done so largely by means of commercial paper that the interests of commerce require that a promissory note, fair on its face, should be as negotiable as a government bond; every restriction upon the circulation of negotiable paper is an injury to the state, for it tends to derange trade and hinder the transaction of business."

And again, at page 97 of the opinion, Judge Vann said:

"The defendant knew that her husband could use the note in any state, and the place of date and payment indicated the state where he expected to use it. Unless she intended that it should be used in a state where her indorsement would bind her, she must have intended to defraud, and hence is estopped.

"But to clinch the argument, we have only to refer to the Negotiable Instruments Law which provides that, except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated. (Laws of 1897, c. 612, § 76.) *This statute was prepared for uniform action in all the states and it has already been adopted in many. It is regarded as simply declaratory of the common law upon the subject under consideration.*"

Various paragraphs of the Negotiable Instruments Law have formed the subject of various other decisions in New York State since August, 1905, and they may be briefly referred to as follows:

Sections 20 and 22 of the Negotiable Instruments Law were passed upon and held to be merely declaratory of the common law in the case of *Waddell vs. Hanover National Bank*, 48 Misc. 578. The case had to do with a draft which contained the following words: "And charge the same to account of M. C. P. Co." The question was whether these words prevented the draft from being negotiable, and it was held that they did not. In the course of its decision, the court cites, in addition to several New York decisions, one from the State of Massachusetts, to wit: *Whitney vs. Eliot National Bank*, 137 Mass. 351, where it was held that the words, "and charge the same to the account of 250 barrels of meal, Ex. Schooner *Aurora Borealis*" did not make the draft payable conditionally, and that the bill was negotiable.

The above case of *Waddell vs. Hanover National Bank* was decided in November, 1905.

Section 23 of the law was the subject of a decision in *Schlessinger vs. Schultz*, 96 N. Y. Supp. 383, where it was held that a note payable to the order of the maker "on demand after date" at a bank designated, is *not* payable at a determinable future time, within the meaning of section 23 of the act.

Section 26 of the act was the subject, also, of the decision in *Schlessinger vs. Schultz* (*supra*), and it was held in that regard that a note payable to the order of the maker, "on demand after date" at a bank designated, is a *note payable on demand*, within this section of the Negotiable Instruments Law.

This case was decided December 8, 1905.

Section 33 of the act was the subject of a decision in *First National Bank vs. Gridley*, 98 N. Y. Supp. 445, where it was held that where one of joint payees of a note indorsed it and mailed it to the maker, and the maker altered the note by

placing his own name therein as payee, after erasing the name of a payee formerly there, and by erasing the word "jointly" from the face of the note, the indorser was discharged of liability.

This case was decided April 20, 1906.

Section 39 of the law was the subject of the decisions in *Kerby vs. Ruegamer*, 107 App. Div. 491, where it was held that section 39 of the Negotiable Instruments Law, requiring an agent or trustee to disclose his principal in order to relieve himself from personal liability, was abundantly complied with where several trustees merely added to their names "as trustees, etc.," when they signed the note in suit without disclosing the principal's name, because the payee or holder knew the name of the principal at the time he received the note, and also the fact that the makers merely intended to sign for such principal.

This case was decided September 29, 1905.

The same section 39 was the subject of the decision in the case of the *Bank of Newport vs. Snyder Manufacturing Company*, 107 App. Div. 95, where it was held in an action brought by the bank against the corporation to recover upon a promissory note purporting to have been executed by it, and which was discounted by the plaintiff bank, that it is doubtful whether the mere fact that the note bears the signatures of the president and treasurer of the corporation is sufficient to establish the validity of the note as the instrument of the corporation, and that it certainly is not sufficient if the note prove to be in fact, an accommodation note, to the knowledge of the bank.

This case was decided in July, 1905, but is made a part of this report because it was probably not included in the report of last year, having been rendered so short a time before the annual meeting of the Conference.

Section 42 was the subject of the decision in *Salem vs. Bank of State of New York*, 110 App. Div. 636, where an agent, authorized to indorse checks of customers payable to the



principal and deposit them in designated banks for collection, indorsed checks and deposited them with a broker as margins on a personal speculative stock account, and the broker deposited the checks in a bank, which received them and paid the proceeds thereof in good faith. It was held that the indorsements made by the defendant were not forgeries within the above named section of the Negotiable Instruments Law, and that the bank was not liable to the principal as for a conversion.

This case was decided on January 19, 1906.

Sections 50 and 98 of the law must have been the basis of the decision in *Koppel vs. Hatch*, 98 N. Y. Supp. 619, although curiously enough the decision nowhere refers to the Negotiable Instruments Law, but as far as anything appears to the contrary was decided on common law principle.

The date of the decision was April 24, 1906.

Section 55 of the act was the subject of the decision in *Westheimer vs. Helmfold*, 109 App. Div. 854. In this case the defendants were accommodation indorsers on a note for \$300, upon which \$100 was advanced, the balance to be paid if, upon investigation, the references given by the indorsers proved satisfactory. The references proving unsatisfactory, the note was returned to the maker to procure another indorser, but the maker, instead of doing as requested, took the note to the indorsers and it was destroyed in their presence. The plaintiff, the payee, then sued the indorsers for the \$100 advanced upon the note, and it was held that the indorsers were liable to the extent of the said amount.

This case was decided in December, 1905.

Section 91 of the act was the subject of the decision in *Elias vs. Whitney*, 98 N. Y. Supp. 667, where it was held that under section 91 of the Negotiable Instruments Law the purchaser of a check which showed upon its face that it had been altered, took with notice of such infirmity, and was not a holder in due course.

This case was decided on April 27, 1906.

The same section, section 91, was the subject of the decision in *Schlessinger vs. Lehmaier*, 99 N. Y. Supp. 389, where it was held that a bank, discounting a note with knowledge that it was affected with usury, is not a holder in due course within the Negotiable Instruments Law, and it cannot recover thereon, notwithstanding the Banking Law (Laws of 1892, c. 689, § 55) fixing the rate of interest which a bank may lawfully charge.

This case was decided June 13, 1906.

Section 116 of the act was the subject of the decision in *Gardner vs. Pitcher*, 109 App. Div. 95, where it was held that an indorser is jointly and severally liable with the maker and that a holder need not exhaust his remedy against the maker before he sues the indorser.

NOTE.—Paragraph 116 of the act which covers this point was not referred to, probably because the same is merely declaratory of the common law.

This decision was made on November 15, 1905.

The same section of the act, section 116, was the subject also of the decision in *First National Bank vs. Gridley*, 98 N. Y. Supp. 445. Likewise, the same section was the subject of the decision in the *Oriental Bank vs. Gallo*, 98 N. Y. Supp. 561, where it was held that the indorsement of a check is a warranty of the genuineness of the prior indorsement, and that, upon discovering the forgery of the prior indorsement, he, the second indorser, becomes immediately liable to make good the amount he has received.

NOTE.—The court in its opinion cited *Story on Promissory Notes*, section 135, and some six New York cases for this proposition, evidently regarding it as a common law principle. The court does not anywhere mention the Negotiable Instruments Law.

Section 131 of the law was the subject of the decision in *Schlessinger vs. Schultz*, 96 N. Y. Supp. 383, where it was held that a note payable on demand must be collected within a reasonable time after its issuance, by reason of the provisions of this section of the Negotiable Instruments Law, and that

where such a note was indorsed by a third party and not negotiated within ten days after its date, presentation for payment within ten months was sufficient to hold the indorser.

Section 133 of the law was also dealt with in the case of *Schlessinger vs. Schultz*, 96 N. Y. Supp. 383, and it was held under that section that a note payable at a bank is properly presented for payment at the bank, though the bank is in the hands of a receiver, and need not be presented to the receiver personally.

Section 135 of the act was the subject of the decision also in the same case, to wit, *Schlessinger vs. Schultz*.

Section 179 of the law was the subject of the decision in *Albany Trust Company vs. Frothingham*, 99 N. Y. Supp. 343, where it was held that the payee of a protested note cannot recover of the indorser who did not, until three months after the protest thereof, receive notice of such protest, the notice having been mailed to him addressed to a place where he did not live, and which was not his last known address.

NOTE.—Mr. Justice Gildersleeve interpreted the law as meaning that the notice must be sent to the "last known" residence. These words do not occur in the Negotiable Instruments Law and Judge Gildersleeve does not, in fact, cite that law at all, nor indeed any other authority, evidently regarding the proposition as a well-established rule of law, which indeed it seems to be.

Section 180 of the law was the subject of the decision in the *First National Bank vs. Gridley*, 98 N. Y. Supp. 445, where Mr. Justice Miller held that the provisions of section 180 do not change the previously existing law on this subject.

This case was decided April 20, 1906.

Section 201 of the act was the subject of the decision in *McCormick vs. Shea*, 99 N. Y. Supp. 467, where it was held that the intentional cancellation of the name of a party secondarily liable from the negotiable instrument by the maker, with the holder's consent, discharged from liability the person whose name is so cancelled, although no consideration were given.

This case was decided June 1, 1906.

Section 205 of the act was passed upon in the case of *Colonial Bank vs. Duerr*, 108 App. Div. 215. In this case A made a promissory note in Ohio, payable to C of New York; B of New York indorsed the note as accommodation indorser in New York. Two weeks afterward, the note being in the hands of C, A altered the note without B's knowledge or consent; then C had the note discounted by the D bank, an Ohio corporation. When the note became due, it was protested for non-payment, and the D bank sued B, the accommodation indorser, whose defense was based upon the proposition that the case was governed by the Ohio law. It was held that the indorser's liability was governed by the laws of the state where the indorsement was made, which, in this case, was New York, and that the indorser, under section 205 of the Negotiable Instruments Law of New York, was liable on the note, according to the original tenor thereof.

*NOTE.—The note was made in 1900, and the Negotiable Instruments Law was not adopted in Ohio until 1903.*

This case was decided on November 10, 1905.

In order that this report may be complete, and as a side light on some of the foregoing decisions, a summary of the history of the Negotiable Instruments Law in New York State is appended hereto.

Respectfully submitted,

CHARLES THADDEUS TERRY,

ERNEST W. HUFFCUT.

*Commissioners of the State of New York  
on Uniform Laws.*

Dated, New York, August 22, 1906.

The Negotiable Instruments Law was adopted in New York on May 19, 1897, and took effect October 1, 1897.

It was amended by the Laws of 1898, chapter 336. The following are the amendments:

1. Paragraph 133. Mistake corrected.
2. " 68. Mistake corrected.

3. Paragraph 111. The word "and" after the word "accepted" should have been "or"; it has never been corrected.
4. " 119. Mistake corrected.
5. " 130. Mistake corrected.
- In the Wisconsin act all of the first sentence after the words "primarily liable on the instruments" are omitted.
6. " 133. Subd. 4. Two mistakes corrected.
7. " 145. The words "or becoming payable," etc., were added by Laws of 1898. They do not appear in the statute in the other states.
8. " 200. The head note "instrument; how discharged." This should have been "how instruments discharged." This mistake was not corrected by the Laws of 1898.
9. " 201. Subd. 6. By an error in engrossing the words "unless made with the assent of the party secondarily liable or" after the word "instrument" are omitted in the New York act. They were not supplied by the Laws of 1898.
10. " 210. Mistake corrected.
11. " 220. Mistake corrected.
12. " 242. Mistake corrected.
13. " 243. Two mistakes corrected.
14. " 280. Mistake corrected.
15. " 287. Subd. 2; mistakes corrected.
16. " 288. Mistakes corrected.
17. " 223. Mistake corrected.

NOTE 1.—By the repealing schedule of above Law of 1897, as amended by Laws of 1898, all of the subjects of "Bills, Notes and Checks" except paragraph 29, Law of 1889, chapter 198, paragraph 1, have been repealed. For paragraph 29 of above act, see Statutory Construction Law, paragraph 24 a.

NOTE 2.—The only amendment after 1898 was enacted by chapter 287 of the Laws of 1890, taking effect September 1, 1894.

**Paragraph 326. Recovery of forged check.** No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or raised.

**NOTE 3.** -There is no change in the "Code of Civil Procedure" in regard to negotiable instruments in the last year.

## REPORT

OF THE

### COMMITTEE ON PURITY OF ARTICLES OF COMMERCE.

*To the President and Members of the Conference of Commissioners on Uniform State Laws :*

When your committee last reported it stated that it earnestly trusted that the united wisdom of those then engaged in perfecting an act of Congress to be offered at the next meeting of the national legislature, might result in the production of an act of Congress which would not only receive the approval of a majority of the members, but would, by the reasonableness of its provisions, receive the hearty support of all those interested in the protection of the consumers against the adulteration, misbranding and imitations of foods, beverages, candies, drugs and condiments in the states and territories of the United States. Since then, not only the federal government, but many of the state and municipal governments, have been most busily engaged in legislation, investigation and penalization concerning the protection of the purity of articles of commerce, generally known as food products. Our public journals have been filled with accounts of the governmental examinations of the methods of the great slaughter houses and meat-packing industries, of the adulteration of cheap confections and of the investigations of the officials of the national Department of Agriculture in many other directions. The discussions in the federal Congress, with the accompanying object illustration attracted the attention of our citizens of all classes. After discussion, suggestions and deliberation a law entitled "An act for preventing the manufacture, sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines and liquors and for regulating traffic therein and for other purposes," was enacted by both houses of Congress and

received the approving signature of his Excellency the President of the United States, on the 30th day of June, 1906.

Your committee has not had the time since the passage of this law to abstract it or intelligently to criticise or commend its many provisions, as the uniform rules and regulations for carrying out the provisions of the act have not yet been perfected. It craves the permission of your honorable body to make such abstract and append such criticisms or suggestions as may be helpful, in the drafting of a law for the use of the individual states in the adoption of a uniform pure food law, to be submitted hereafter.

The act which is a model for brevity makes it *inter alia* unlawful to manufacture within any territory or the District of Columbia "any article of food or drug which is adulterated or misbranded" within the meaning of the act, and makes the violation a misdemeanor punishable by fine or imprisonment, or by both fine or imprisonment in the discretion of the court.

It further prohibits the introduction into any state, territory or the District of Columbia, from any foreign country, or shipments to any foreign country, of any article of food or drug which is adulterated or misbranded within the meaning of the act, and any person shipping or delivering for shipment, or who shall receive and having so received shall deliver to any other person any such article, or who shall sell or offer for sale in the District of Columbia or a territory of the United States any such article, shall be guilty of a misdemeanor punishable by fine for the first offense, and upon conviction for each subsequent offense by an increased fine or by imprisonment.

There is a proviso that when the article is intended for export to any foreign country, and is prepared or packed according to the direction and specifications of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country, it shall not be deemed misbranded or adulterated. However, if this article shall be in fact sold or offered for sale for domestic



use or consumption, then this proviso does not exempt the article from the operation of the provisions of the act.

The act provides for the making of uniform rules and regulations for carrying out its provisions by the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce, the examination of specimens of food and drugs by the Bureau of Chemistry of the Department of Agriculture, and for notice to and a hearing of the alleged violator of the law by the Secretary of Agriculture. If it appears that the act has been violated, the secretary certifies the fact to the proper United States district attorney. After judgment of the court notice is to be given by publication as may be prescribed by the rules and regulations not yet ordained.

It is made the duty of each district attorney to commence and prosecute the proceedings without delay. Section 6 of the act defines the meaning of the term "drug" and section 7 with considerable detail defines what for the purposes of the act shall be deemed "adulterations" in the case of drugs, in the case of confectionery and in the case of food. It also defines the meaning of the term "misbranded" and states what shall be deemed to be "misbranded" in the case of drugs and in the case of food.

The act further refers to articles labeled, branded or tagged so as plainly to indicate that they are compounds, imitations or blends, and the word "compound," "imitation" or "blend," as the case may be, is plainly stated on the package in which it is offered for sale. It provides that the term "blend" shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only, and further provides that nothing in the act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in as far as the provisions of the act may require to secure freedom from adulteration or misbranding.

Section 9 provides that no dealer shall be prosecuted when he can establish a guarantee signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such articles to the effect that the same is not adulterated or misbranded within the meaning of the act designating it.

This guarantee to afford protection must contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties, which would attach in due course to the dealer under the provisions of this act.

Section 10 provides for seizure for confiscation by a process of libel for condemnation of goods being transported from one state, territory, district or insular possession to another for sale, etc., and for procedure after such seizure and condemnation.

Section 11 provides for delivery by the Secretary of the Treasury to the Secretary of Agriculture, upon his request from time to time, of samples of foods and drugs, which are being imported into the United States or offered for import, and for a hearing, after notice to parties, before the Secretary of Agriculture, when under certain circumstances the article shall be refused admission and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of the goods if not exported within three months by the consignee; provided that the Secretary of the Treasury may deliver to the consignee the goods pending examination and decision, on execution of a penal bond for the full invoice value of the goods with the duty thereon. On refusal to return the goods for any cause to the Secretary of the Treasury, when demanded for the purpose of excluding them from the country or for any other purpose, the consignee forfeits the full amount of the bond.

All charges for storage, cartage, labor, etc., on goods refused admission or delivery are to be paid by the owner or consignee,

and in default of such payment shall be a lien against any future importation made by such owner or consignee.

Section 12 defines the meaning of the words "territory" and "person" and provides for the construing and enforcing the provisions of the act. It also provides that the act, omission or failure of any officer, agent, etc., of a corporation, etc., within the scope of his employment or office shall be deemed to be the act, omission or failure of such corporation, etc., as well as that of the person.

Section 13 provides that the act shall be in force and effect from and after the first day of January, 1907.

Your committee upon the publication of the uniform rules and regulations for carrying out the provisions of the act will give the same with the act most careful consideration, when it trusts it may be prepared to submit to the Conference, a uniform law for adoption by the legislatures of the individual states of the nation.

On behalf of the committee,

WILLIAM H. STAAKE,  
*Chairman.*

**REPORT**  
**OF THE**  
**COMMITTEE ON A UNIFORM INCORPORATION LAW.**

**MAJORITY REPORT.**

*To the Conference of Commissioners on Uniform State Laws :*

At the end of the report submitted by this committee at the last meeting of our Conference it was recommended that the committee be continued as a standing committee and requested to continue the study of the subject of a uniform incorporation law and to report further upon it, from time to time, as they might be able to arrive at conclusions which seemed to them to make a report desirable.

Nothing of special interest relating to the subject has occurred since our last meeting except the debate in the federal Senate on the extent and limits of the power of Congress under the interstate commerce clause of the Constitution and the enactment of the railroad rate and meat inspection bills. The debate and legislation referred to further illustrate and emphasize the importance of a uniform law for the organization and control of corporations, but do not remove any of the difficulties of securing its enactment that were pointed out in our last report.

The only service we think we can render to the cause of a uniform incorporation law at present is to recall the remedies that have been suggested for the evils that have grown out of the present condition of the statute laws relating to corporations enacted by the various states, and to indicate the course of sentiment on the subject.

It has been proposed that the federal Constitution be amended so as to confer upon Congress exclusive power to provide for the organization of corporations, especially those engaged in interstate commerce. This plan would effect such a radical change in the distribution of the powers of the national

and state governments that its statement creates alarm and arouses protest.

It has been said that Congress at present has sufficient power under the interstate commerce clause of the Constitution to authorize the formation of corporations to engage in interstate commerce, and that it is the duty of Congress to do so, and at the same time make it difficult, if not impossible, for corporations to engage in interstate commerce unless organized under the Act of Congress. If this plan should be carried out, it would give to the federal government control of such corporations and also over their business. A remarkably instructive presentation of this plan was made by Professor Wilgus, of Michigan, in an address before our Conference at St. Louis two years ago. The objections to the plan, however, are that it would (like the other) largely increase the power, or at least the activity of the national government and diminish the scope of the sovereignty of the states. The experience derived from the establishment of the national banks seems to afford a favorable illustration.

Another suggestion has been made that has been received with less disfavor; namely, that Congress enact a law regulating corporations engaged in interstate commerce, so framed as to compel the states to enact laws substantially uniform in many important respects. As nearly all powerful corporations engage in interstate commerce to some extent, this plan would force corporations to organize or reorganize under the laws of states that had conformed to the requirements of the Act of Congress. While it may be said that this suggestion is under careful consideration by those interested in the matter of a uniform incorporation law, still it must be admitted that legal conservatism is not yet in its favor and general public sentiment on the question has not been formed or expressed.

Perhaps some acute condition may arise and arouse and irritate public sentiment to such a degree as to induce the passage of such an Act by Congress, as in the recent case of the provision relating to the inspection of meats; but it is not

likely that a law inspired by some temporary emotion would be framed with the care and minute elaboration that should be bestowed on a subject of such far reaching importance.

The difficulties of securing the enactment of a uniform incorporation law by the states were pointed out so fully in our last report and in the address of Professor Wilgus, as to leave little or no room for any further comment on that aspect of the matter. Voluntary co-operation of the states seems to be unattainable and the discussions and action of this Conference at recent meetings indicate a decided reluctance to recommend or approve a congressional incorporation law, or an amendment to the federal Constitution giving Congress additional power to enact such a law. We think, therefore, that the matter must be left at present to take its chances in the course of events.

FRANK BERGEN,  
*Chairman.*

August 22, 1906.

#### MINORITY REPORT

##### *To the Conference of Commissioners on Uniform State Laws :*

The undersigned, a member of the committee on "A Uniform Incorporation Law," having read the report made by the Chairman of that committee, respectfully dissents from the conclusions therein contained and submits the following report:

On the subject of a Uniform Incorporation Law, I am quite in accord with the views so ably presented by Professor Wilgus. That it will ever be possible to get the states voluntarily to adopt a Uniform Incorporation Law is as unlikely as to formulate a Uniform Insurance Law and have it adopted voluntarily by the different states. The local political interests would prevent it.

But is it the part of wisdom to take no action and make no effort whatever to obtain the desired result? While all that

may be desired cannot be obtained at present without an amendment to the federal Constitution, still Congress has power to do much in that direction. I believe with others "that Congress at present has sufficient power under the interstate commerce clause of the Constitution to authorize the formation of corporations to engage in interstate commerce, and that it is the duty of Congress to do so, and at the same time make it difficult, if not impossible, for corporations to engage in interstate commerce unless organized under the Act of Congress"; and I further believe that our committee should make a report recommending such action, and its influence and the influence of the Conference should be exerted to bring about such a result.

Corporations are classed as citizens of the different states by whom they are created and from whom they derive their political rights. These artificial persons owe no national allegiance and cannot receive national aid, while every natural person is a citizen of the United States, as well as of the state, and owes allegiance to both and receives the protection of both; there is no logic in this differentiation.

With the onward march of commerce state lines have become practically obliterated. The demand for national legislation will increase in the future. That demand will become irresistible and will overwhelm the puny efforts of politicians in a state here or there. Consolidation and combinations are the result of extended interstate and international commerce.

The irresistible demand for national legislation was proven by the passage by the last Congress, in spite of the desire of the majority, of three noted bills, the Railroad Rate Bill, Pure Food Bill and Meat Inspection Bill; confessing the inability of the states separately to deal with these matters. We have arrived at a period when old commercial methods are being revolutionized and adequate legislation must be provided for by Congress, as the only body that can impose salutary regulations and guard the interests of the people as a whole when questions of interstate commerce or interstate policy are

involved; the states will have enough to do to look after purely local affairs and local administration.

It were better also if we had only one code of law, civil and criminal, for every state in the union. Are the people in New Jersey different from the people of Illinois; are their interests, aims and aspirations different? Is there any reason why there should be a different criminal code existing in the one state from that of another? Is there any reason why there should be one civil code in the State of Maine and another in the State of Texas? Should a different code of morals exist in Virginia from that of California? Are not the inhabitants of the United States one people, under one flag, with the same aims and aspirations? Then why should we be frightened at the shadow of state sovereignty; the substance has been disappearing for one hundred years; and has almost sunk beneath the horizon. It will not come back, and the practical man has lost sight of it long ago; he deals with actual conditions, not theories.

Had the framers of the Constitution foreseen the tremendous power now in the hands of the President of the United States, or that which he wielded even fifty years ago, they would undoubtedly have come to the conclusion that a republican form of government could not survive. But the people of the United States are as free and as secure today as they were upon the day of the ratification of the Constitution of the United States; and so they will be in the future, though that power be multiplied again and again. When the Constitution was framed there was practically no interstate commerce. Each state was a sovereign in fact as well as in theory, and it could guard all the interests within its borders, as they were all practically confined to the state itself. How changed are conditions, when a simple industry in a state does one hundred times more business without the state than within it; when business is transacted more readily when the parties are one thousand miles apart than in the old days when they were only a mile apart. The necessity of the assumption of greater



duties by the national government and the exercise of greater power has become imperative. We have become commercially, as well as politically, a world power. We are in fact one of the great nations of the earth, destined to become the greatest. Our resources are unrivaled. Our progress is unparalleled. Our future demands are national legislation to aid and control interstate and international enterprises and industries.

Respectfully submitted,

JOHN C. RICHBERG,  
*Member of Committee on a Uniform  
Incorporation Law.*

REPORT  
OF THE  
COMMITTEE ON INSURANCE.

*To the Conference of Commissioners on Uniform State Laws :*

The Committee on Insurance, in accordance with the By-Laws of the Conference, submits the following report :

Since the last session of the Conference the testimony taken before the Armstrong Committee of the New York legislature has called the attention of the public to the scandalous abuses which have characterized the administration of three of the largest life insurance companies and to the necessity of providing by law remedies for these abuses. The thorough and arduous work of the Armstrong Committee has resulted in drastic legislation in the State of New York, embodied in fourteen bills, some of which are local in character, being amendments to existing statutes of that state, while other bills embody restrictive legislation of a general character which can be incorporated in any uniform laws which may attempt to deal with this important subject.

How vast are the interests involved in life insurance is shown by the fact that on January 1, 1905, there were outstanding in the ninety principal old line life insurance companies of the United States 21,082,352 policies, representing an aggregate of \$12,928,493,754 of insurance, a sum greater than the value of all steam railroads in the United States, which on June 30, 1904, was \$11,244,852,000.

These ninety companies held assets aggregating \$2,573,186,639. This sum is more than three times the aggregate capital of all the 5331 national banks in the United States. Of these assets the three great New York companies, which have been the subject of the Armstrong investigation, held nearly one half, or \$1,247,331,738. The total income of these companies during the year 1904 was \$612,896,887, a sum greater

than the total revenue of the United States during the year ending June 30, 1905.

The startling nature of the evils disclosed by the Armstrong Committee and the vast interests affected by any legislation which may have in view the regulation of the life insurance business has made the subject one of absorbing interest to lawyers and laymen alike, and has resulted in an attempt by a representative body of Insurance Commissioners to draft a uniform law of a comprehensive character for adoption by the several states. While the Armstrong Committee was in session the Commissioner of Insurance of the District of Columbia, at the suggestion of President Roosevelt, whose attention had been called to the matter by the Governor of Minnesota, issued a call for an insurance convention to be held in Chicago in February last, addressed to the governors, attorneys-general and commissioners of insurance of the several states and territories of the union. The invitation to this convention later included the President and members of the Committee on Insurance of this Conference, as well as members of the National Association of Life Underwriters, who by the action of the convention were invited to participate in the discussion of the convention but given no vote. The convention met in Chicago on the first day of February last and continued its session through the following day. Thirty-two states were represented by their insurance commissioners or their deputies and the entire representation by governors, attorneys-general, insurance commissioners, legislators, actuaries of various insurance departments and others was about one hundred. In that number are included the President and three members of the Insurance Committee of this Conference, Mr. Richberg, Mr. Russell and Mr. Brandeis, who attended the convention and took part in its proceedings.

The interest of the President in the objects of the convention was disclosed in the opening address of Commissioner Drake, of the District of Columbia, when, after detailing the initiatory steps which had led up to the calling of the convention

by a committee of the State Insurance Commissioners, he stated that "the following plan was unanimously agreed upon, which has the approval of the President and the Commissioners of the District of Columbia." This plan was :

"A bill to be introduced and urged in Congress which shall be a code for the regulation of insurance in the District of Columbia, but which, with necessary changes to make it applicable, may be enacted by the states and territories; thus making a uniform regulation of insurance, at once protective of policy holders and fair and just to companies, and avoiding the vexatious and costly burden incident to differing and often conflicting local legislation, the increased expense of which must be paid by policy holders.

"It is hoped, also, that such a bill may be framed as, when enacted, will render impossible such gross extravagance and misuse of trust funds as have been shown to exist under present conditions, all of which is paid for by an unnecessarily large cost of insurance.

"It is believed that such a bill, if framed with due care, and presented with the sanction of such a convention as this, will be enacted by Congress without substantial amendment and that like action will probably follow in most, and ultimately in substantially all of the states and territories. 'Tis a consummation devoutly to be wished.'"

Such a bill has been prepared with the aid and approval of a committee of the convention, and sent to Congress with a special message of the President. This bill, which is known as the "Ames Bill," still slumbers in the Insurance Committee of the House of Representatives, and a reference to its provisions will be made later in this report.

The committee who had charge of the preliminaries of the convention had "conferred in executive session with the Armstrong Committee and its counsel, all of whom heartily approved of the adoption of uniform insurance laws as the best solution of the problem."

It was expected that the report of the Armstrong Committee would have been made public before the date selected for the assembling of the convention, but such was not the case, and

the convention adjourned *sine die* after two days of general discussion, having formulated certain propositions to guide a committee which it appointed with full power to draft uniform laws to carry out the principles thus enunciated. This committee consisted of twelve insurance commissioners and three attorneys-general, and the governors of six states and the President and members of the Committee on Insurance of this Conference were added as an advisory committee. The propositions adopted by the convention were as follows :

“*First.* We believe that the system commonly known as the deferred dividend plan, which consists in deferring all dividends to the end of a period named and of forfeiting the shares of the surplus justly belonging to those policy holders who either lapse or die before the end of the period, is unsound in principle, unjust in its operation, and such legislation should be enacted as will remove the evils of this system.

“With respect to policies of that character already issued, there should be required from this time forward an annual statement and provisional apportionment of surplus to each policy holder and the aggregate so apportioned to such policy holders should be charged as a liability of the company.

“With respect to all future policies there should be an annual accounting of the surplus, an apportionment, to begin at a proper time after the issuance of the policy, to each policy holder of his share of the entire surplus of the preceding year after reserving a reasonable margin of safety, and an option on the part of the policy holder to withdraw his share in money. Other options relating to the purchase of additional insurance may be included.

“*Second.* With respect to the representative form of government of mutual insurance companies, we have carefully reflected upon all the plans that have been proposed. We recognize the difficulty in accomplishing the much desired result.

“We are impressed with the necessity of a change in the present methods and we suggest for consideration by the committee the adoption of some plan whereby there will be in each mutual company a division of jurisdiction with the right of the policy holders of each jurisdiction to select a representative or representatives to attend the annual meeting of policy holders ;

the details of such plan to be devised so as to bring as nearly as possible to each policy holder the convenience and practicability of exercising his right to a voice in the management of his company.

*"Third.* With respect to publicity, we believe that the existing laws of many states are sufficient to authorize the departments of insurance to call for whatever information is desired. The remaining states should confer upon their insurance departments like powers.

*"Fourth.* With respect to investments, we believe that while all investments should be conservative and exclude speculative properties, it is impractical to attempt uniformity among the states. Each state must necessarily determine the question with reference to its own peculiar conditions.

*"Fifth.* With respect to standard forms of insurance contracts, we believe that the statutes of the several states should prescribe the forms of life insurance policies, and that no other form than those so prescribed should be permitted. Uniformity upon this subject is in the highest degree desirable, and an earnest effort should be made to secure that result. In preparing these forms the extreme of care should be exercised in order that they may embrace every legitimate contract of insurance and do no injustice to any class of companies.

*"Sixth.* Respecting the several other subjects enumerated by this Conference for discussion and referred to this committee, we believe that this Conference should not now finally declare its convictions, but that the committee of sixteen should further carefully investigate and consider the same in formulating the proposed regulation of life insurance companies."

The other subjects referred to in the sixth resolution on which the convention did not "declare its convictions" were as follows:

- (a.) Limitation of age in child insurance.
- (b.) Limitation in expenses to loading and restrictions on cost of new business.
- (c.) Limitation of amount of business and assets.
- (d.) Method of determining business should be uniform.
- (e.) Non-forfeiture provisions should be uniform.

(f.) Practicability of investments in individual states of a percentage of the reserve on the business therein.

(g.) Reports in annual statements of dividends paid, credited or provisionally credited under different forms of policies of the several ages of entry and several years in force.

Your President and Committee on Insurance who were made advisory members of the Committee of the Insurance Convention which was charged with the duty of formulating uniform insurance laws, offered to aid the committee by shaping a plan of such legislation. This offer was made in a communication to the Chairman of the committee under date of February 6, 1906, which contemplated taking up the work in the usual way through the initiative of the Insurance Committee and then submitting it to our Conference for approval. After the Armstrong Committee had reported with draft of bills, the committee of the Insurance Convention was convened at Chicago on the 20th day of March last. It was in session three days and two nights and our Conference was represented by two members, Mr. Richberg and Mr. Russell. The result of their work was reported to the President by Commissioner Drake as follows :

“The first two day and night sessions were devoted to hearings given the life insurance companies on the fourteen Armstrong bills that are pending in the New York legislature. Every section of these bills was carefully examined and objections to them were heard from officers, actuaries, attorneys and agents of the companies that were represented ; all of which arguments, for and against the measures, were given careful consideration by the committee, and such features of the bills as were deemed advisable were recommended in the general report of the committee for adoption, a copy of which report is submitted with this.

“The third day of the meeting was devoted entirely to the Ames Bill, which is now pending in Congress, and, as I stated to you in my letter of the 27th instant, the committee, in the short time it had, gave each feature of that bill the most careful consideration, not only with reference to the policy holders and the public, but to the insurance companies as well ; and,

while endeavoring to safeguard the interests of policy holders, we tried to be fair and just toward the insurers and to impose upon them no unreasonable conditions.

"To cover the objects and purposes aimed at by this bill, viz.: a code of law for the District of Columbia, it was deemed necessary to both amend and enlarge it by adopting some of the best provisions of the time tried state laws; also the best features of the Armstrong bills; and, as it now stands, it is the product of experience and the judgment of some of the best life insurance experts and lawyers of the country. I think it will be fairly satisfactory to most of the life insurance companies and, with one exception, perhaps, to all the insurance departments."

The salient features of the Ames Bill as amended by the committee of the Insurance Convention are thus stated by Commissioner Drake in his report to the President under date of April 14, 1906:

*"First.* It will furnish the District of Columbia with a clear, concise insurance code (our present insurance laws are defective and ambiguous; therefore, exceedingly difficult to administer) based on experience in some of the states of more than half a century. The bill also contains features that are devised after mature thought and reasoning by some of the best insurance experts and lawyers of the country, that will be beneficial to policy holders and the insuring public.

*"Second.* It will provide for a properly equipped bureau of insurance which will be able to make examination of all foreign insurance companies that desire to do business in the District; domestic companies, too, when requested by any insurance commissioner and the company, to be examined although they may not want to qualify here.

*"Third.* The result of its examinations of foreign and domestic companies will, no doubt, be accepted, in time, by the various state insurance departments; thereby saving the cost to insurance companies of numerous examinations and the accounting also to forty odd insurance departments.

*"Fourth.* It will abolish taxation on insurance premiums for revenue; also the arbitrary advertising of the companies' annual statements in newspapers and trade journals, which advanced steps should be taken by the department at the seat of our national government.



*"Fifth.* The bill creates a proper code of law for the incorporation of insurance companies within the District of Columbia. It provides for the organization of companies on the temporary stock plan, and that life insurance companies issuing participating policies shall not do business on the non-participating plan; it limits the investment of capital stock; it also provides for the nomination and election of life insurance officers by mail, proxy, in person or by representatives; limits the life of proxies, and forbids their use in the hands of an officer or agent of the company.

*"Sixth.* It provides for non-forfeiture of policies after the payment of two full annual premiums and the annual accounting and annual distribution of dividends. It also provides the standard forms of policies adopted by the New York legislative committee, which must be plainly printed on the policy, together with the plan and dividend periods, and allows such other forms as the insurance commissioner, after a full hearing, may approve.

*"Seventh.* It requires the board of directors to fix the salaries annually of all officers, trustees, directors and agents whose salaries exceed \$5000 per annum, and requires itemized vouchers for all disbursements over \$100; it also provides for greater publicity through the published annual reports of the various insurance departments, and prohibits an insurance company, or its agent, from making political contributions.

*"Eighth.* It requires all companies doing business in the District to be examined every three years, or oftener, if deemed necessary by the commissioner; it requires the reserve of life insurance companies doing business in the District of Columbia to be calculated annually, as of the 31st day of December next preceding, by the actuary of the department, and permits valuation of policies the first year on the preliminary term plan; it forbids discrimination between insurants of the same class and equal expectation of life, and prohibits pensions.

*"Ninth.* It prohibits insurance to be transacted on the regular assessment plan and also prohibits estimates to be used as to the future cost of 'old line' life insurance and dividends that are likely to be hereafter declared on that kind of insurance.

*"Tenth.* It provides for no change in the present fraternal beneficial association law of the District of Columbia, except

the change of name of 'Superintendent of Insurance' to 'Commissioner of Insurance.'

*"Eleventh.* It provides for the overseeing of fidelity and surety companies; also title companies, neither of which are now subjected to supervision of the Department of Insurance of the District of Columbia. Fidelity and surety companies now qualify here through the attorney-general and report to the comptroller of the currency. Title companies are not required to qualify; and therefore they report to no department. It provides for the repeal of that portion of section 6 of the act entitled 'An act to establish the Department of Commerce and Labor,' approved February 14, 1903, which authorizes the Bureau of Corporations to assemble, publish and supply useful information concerning corporations engaged in insurance. And it also transfers the power that was enacted in 1894, in accordance with chapter 282, from the 'Attorney-General' to the 'Insurance Commissioner of the Department of Commerce and Labor.'

*"Twelfth.* The bill transfers the existing insurance department of the District of Columbia to the Department of Commerce and Labor, thus providing for co-operation without at all interfering with state supervision between the federal department and the state departments in the matter of examination of insurance companies, which plan, it is believed, all the insurance departments will approve; also most, if not all, the insurance companies. The bill is not perfect. It is, however, a fair initiative, the first fruit, so to speak, of the Chicago convention, and after being subjected to some amendments which it will necessarily have to undergo, it will be a safe model for all the states to pattern after for the purpose of bringing about, in time, uniform insurance legislation."

An examination of the Armstrong bills will show that the stringent features of the Ames Bill, looking to the protection of the policy holders, are taken from the former bills, while other features of the Armstrong bills having the same object in view have not been incorporated in the bill now pending in Congress. The value of the omitted features cannot be well discussed at this time, nor does your committee make any recommendation as to the same, as they are to be the subject of further consideration by the committee of the Insurance

Convention, in which the President and Committee on Insurance of this Conference is invited to participate in order to aid the former committee to complete its work of framing uniform insurance laws for adoption by the several states, as it seems to be admitted that the Ames Bill is "imperfect and requires amendments." To that end the chairman of the committee of the Insurance Convention, Commissioner O'Brien, of Minnesota, has lately issued a call for his committee to meet at St. Paul on the 22d day of August next, three days in advance of the sessions of our Conference on Uniform Laws. This gives your President and Committee on Insurance an opportunity to participate in the work of the committee of the Insurance Convention, and the results of that joint meeting will later be brought to your attention.

From the foregoing it will be noticed that on certain points there seems to be agreement on the part of all who have investigated the subject, whether committees or legislators, as to the need of remedial legislation and what that legislation should be, and among those points of agreement is the need of standard forms of life insurance policies. This suggests the inquiry why, if standard forms of policies in life insurance are needed, there is not also an equal need of standard forms of policies in fire insurance, and your committee is of the opinion that such need exists, and may properly be considered as a feature of a uniform law on fire insurance, when the time comes for our Conference to take up that subject. This view is confirmed by an examination of the many complicated and conflicting forms of fire insurance policies now in use, as well as by an examination of the forms of policies in use in the comparatively few states which have prescribed the so called "standard policies," such examination will disclose not only that the forms are not uniform, but that even on such an important matter as compulsory arbitration, which seeks to deprive the assured of the right to trial by jury on a question of fact, they differ in the method of selecting the referees, whose disinterestedness is not secured, and in the effect given to their

decision; which in some cases is made final and conclusive, in others is made *prima facie* evidence only, as to the amount of loss. These variant policies furnish ample proof of the manner of their growth; their complicated provisions, bristling often with technicalities and arbitrary conditions, are largely the composite product of the ingenuity of the insurance companies in their effort from time to time to meet the decisions of the courts, fixing their liability, and as they are *ex parte* products it is not surprising that in these policies the interests of the insurance companies, rather than the interests of the assured, have been protected. A uniform law should be based on a just consideration of both interests.

Respectfully submitted,

July 18, 1906.

CHARLES F. LIBBY,  
TALCOTT H. RUSSELL,  
C. LA RUE MUNSON,  
JOHN C. RICHBERG,  
JOHN L. WEBSTER,  
ROBERT W. WILLIAMS,  
*Committee on Insurance.*

REPORT  
OF THE  
COMMITTEE ON THE TORRENS SYSTEM AND REGISTRA-  
TION OF TITLE TO LAND.

*To the Conference of Commissioners on Uniform State Laws :*

Your committee would respectfully report :

That the object and scope of the Torrens System is so well understood by all of the members of this Conference and lawyers generally that it is not necessary to state more than that it originated in Australia, but like the Australian system of voting, while a decided improvement upon former methods, may be still made the subject of salutary amendments. The Torrens System is in force in England and most of her colonies, and in the United States is in force in Illinois, Massachusetts, California, Minnesota, Oregon and Colorado. In these states it has not met with that encouragement and been taken advantage of to the extent that its sponsors prophesied for it. From information obtained, it appears that practically nothing has been accomplished in the States of Colorado and California. But few applications have been filed in Minnesota and Oregon ; none in California in two years ; and to a limited extent only in Massachusetts. In Illinois, where the system has been in vogue by those who desire to avail themselves of it, only one county, namely, Cook County, has this system in use. From 1899, when the first application was filed in Cook County, up to August 1, 1906, a total of 2088 applications had been filed ; the number filed in 1899 was 155, and in 1905 the number of applications filed was 366, the average for the period of six years being about 248 per annum. In 1903 the highest mark was reached, being 411 applications, and in 1905 the applications were reduced to 366 ; for the first six months of 1906 the number of applications was 180. It must be admitted this is not a very satisfactory showing to those who favor

the system, when we consider that in this County of Cook there are nearly 1,000,000 separate lots, tracts and parcels of land carried on the books of the Board of Assessors of Cook County, each of which is assessed at one-fifth of its full value for taxation. Out of these nearly 1,000,000 separate lots and tracts, valued by the Board of Assessors at over \$2,000,000,000, only 10,574 different lots and tracts, or one per cent., have been registered, with a value of \$8,586,060, or less than one-half of one per cent., during the last seven and one-half years.

Finding that the lawyers and the public generally did not respond with that alacrity in the registration of land titles under this system which the promoters had anticipated, they caused, on May 18, 1903, an amendment to be passed by the General Assembly, by which it became "the duty of all executors, administrators and trustees holding title or power of sales under wills admitted to probate after that date to apply within six months after their appointment to have registered titles to all non-registered estates and interests in land" (situated in any county in which this act at the time is in force; it being provided in the law that before any county can adopt this system it must be submitted to the voters of the county and carried by a majority vote at a general election) "which the decedents they represented might have registered in their lifetime in their own right." This amendment is not in force, having been declared invalid by the Supreme Court of the state.

It will be borne in mind that in the different counties in Illinois, and especially in Cook County, there have been in vogue, almost since the organization of the state, concerns which make it a business to furnish abstracts of title to real estate, and which, while monopolistic in their tendencies, have yet universally met with favor by the Bar and the public generally. Whenever property is sold the owner is invariably in possession of an abstract of title, which is continued by the abstract company from the time when the last purchaser acquired it to date, and a reasonable price is charged therefor. The County of Cook

also has an Abstract Department, of which the Recorder of Deeds is chief. The charges here are somewhat less than by the private abstract company. The abstracts furnished by either are merchantable and taken by all attorneys, who invariably render their opinion on the title of the property from the examination of these abstracts of title.

The abstract company (Chicago Title & Trust Company) in the city of Chicago also guarantees titles at reasonable cost. As the institution is entirely responsible, it is well patronized, as shown by the fact that it issues from 12,000 to 15,000 guaranteed policies per annum, and the orders which it receives for abstracts showing a chain of title from the government to date, and continuation of abstracts of title amount to 37,000 per annum at an average cost of \$15 to \$16 per order, whereas the number of certificates issued on account of warranty deeds filed in the office of the Register of Titles from 1899 to July 28, 1906, was 3491.

The Chairman of your committee is very much indebted to the courtesy shown him by the Chairman of the Executive Committee, Judge William H. Staake, for furnishing him with copies of the 9th and 11th annual reports of the Pennsylvania Bar Association, which contain most valuable and instructive information upon this subject. In the report of 1903 is an exhaustive paper by Charles Wetherill, Esq., on the "Judicial Recording of Titles." Mr. Wetherill says:

"Robert R. Torrens was employed in the custom house in Adelaide, South Australia, in 1850 and was familiar with the transfer of title to ship by registration. He afterwards became registrar of deeds, and the idea occurred to him that it would be advantageous to transfer land by the same method. Torrens was not a lawyer, and, it seems, had not heard of the German system from which the English Shipping Act was derived; so that he is fairly entitled to credit for original invention, although the legal principle is old.

"Under the German system, as well as that of Austria, there is in each district an official public survey, by which each plot of land is accurately defined and the German courts register plots as well as titles with certainty and ease. The costs

are so moderate as to be in the reach of the poorest land owner. The legislative acts are models of precision and brevity superior to the efforts alike of Torrens, of the Australian lawyers and of the English chancellors."

The Committee of the Pennsylvania Bar Association, in their report of 1905, say that they prefer the German system to the Torrens or the Australian.

"The German system is superior to ours. It is simple, easily understood, absolutely just. Its introduction into Pennsylvania would not involve any radical change of law, and it is not violative of any principle of the American Constitutions; it has the additional merit of being very cheap in the cost of its administration, after the cost of founding the survey has been met. It gives a practically indefeasible title to the purchaser for value, and absolute security to the mortgagee and lien claimant. Under its provisions land is a quick asset on which money can be raised in any amount large or small which its intrinsic value justifies, at a minimum of expense and delay. Where it has been adopted, it has increased the value of land, the bulk of dealings in realty, and the facility of borrowing money, by stimulating investments in mortgages, and at the same time lowering the charges against the borrower. Above all, it has encouraged the young working men to become the owners of their homes, thereby assisting the most deserving class in the community.

"In Germany the law vests in the registered owner absolute and indefeasible titles, subject, however, to the rectification of errors in all cases except as against bona fide purchasers for value. The registration of titles in Germany is made with reference to, and has a direct connection with, the system of land tax registers and maps called cadasters. Registration is compulsory, and the land is divided into districts with a local tribunal of the first instance in each. When notice to register the land in one of these districts is given, each owner must apply for registration, and the whole district is brought under the law at one time. Boundaries are ascertained, and, as a part of the proceeding, the land tax registries are perfected.

"The bringing of the land under the operation of the law has been described as follows: 'The public authority relied upon for the examination of applications is the local tribunal of first instance (amtsgericht). It would have seemed rather



rash to oblige the provinces to accept a single magistrate's determination, as they had always been accustomed to having their lawsuits settled by the magistrates. Where an order has been given by the ministry of justice in Berlin that registration shall be begun in an amtsgericht district, notice is sent to all the district occupiers requiring them to appear before the tribunal and produce:

"*First.* An extract from the cadaster office showing the parcels they are believed to own in any particular township.

"*Second.* All their personal documents serving as proofs of their claim.

"On the appointed day each applicant is cross-examined by the tribunal, and a statement is drawn up of his declarations. This statement contains:

"(a.) The name of the applicant's predecessor.

"(b.) The legal nature of the last transfer concerning the land (sale, grant, legacy, inheritance, auction, contract, etc.).

"(c.) A reference to any document produced by the applicant.

"(d.) A list of mortgages charged upon the land.

"A copy of this statement is sent to the mayor of the town where the parcels claimed are situated, as well as to the keeper of mortgages, who must not give advice of their personal belief concerning the accuracy of the claim. Notice is also sent to all the known incumbrancers. Each case in a township is dealt with in the same way, and as soon as information is collected as to all the cases in a township, notice is sent to the president of the court of appeal, on which all the local tribunals are dependent, and which for the Rhine provinces sits in Cologne. The president of the court of appeal obtains from the minister of justice a rescript fixing a preclusive term of six months for objections, if any, to be produced, and possible opponents are warned of the proceeding by advertisements in the local papers, requesting them to send in their claims. As soon as the six months have elapsed the registers are engrossed according to the claims received. After this engrossment is accomplished, there is still a final delay of eleven days for actions to be commenced by opponents before the registers come into operation. This procedure has proved satisfactory. A few mistakes, but no cases of intentional fraud, have been observed." Registering Title to Land, Jacques Dumas, 1900. Callaghan & Co., Chicago. A series of lectures delivered at Yale in 1899-1900."

It has been assumed that great inconvenience in sales and of certainties of titles in the city of Chicago was caused by the destruction of the public records in the great fire of October 9, 1871, and that this induced those most interested in real estate in that city to urge on the legislature the adoption of the Torrens System of Registration. This is an error, as the destruction of the public records did not at all materially inconvenience sales or create uncertainties of titles, because the abstract companies had a complete abstract of all property in the city of Chicago, County of Cook, from the government down to the time of the fire, and which were not destroyed by the fire, owing to their being contained in fire proof vaults.

In those states where the ancient method of searching records prevails, for the purpose of being enabled to give an opinion as to the title of real estate, no doubt it will be advisable that the Torrens System or the German System should be adopted.

In Illinois, which has made the greatest use of the Torrens System, its use is limited to one county out of 101. The statutory fees for registering titles amount to but \$24, with additional sheriff's fee of \$1 for each person served; and each applicant for the first registration contributes to the indemnity fund \$1 on each \$1000 of the value of the property. Upon a sale a fee of \$3 is charged for a certificate.

The members of this Committee, however, are quite of the opinion that it is not advisable at the present time to recommend the adoption of a uniform law in reference to a system of registration of title to real estate.

Respectfully submitted,

JOHN C. RICHBERG, *Chairman*,  
JAMES BARR AMES,  
ERLISS P. ARVINE,  
WALTER E. COE,  
W. O. HART,  
CHARLES T. TERRY,  
*Committee.*

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW  
RELATING TO THE SALE OF GOODS.

(Approved in final form.)

PART I.

FORMATION OF THE CONTRACT.

**Section 1.**—[*Contracts to sell and sales.*] (1.) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2.) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3.) A contract to sell or a sale may be absolute or conditional.

(4.) There may be a contract to sell or a sale between one part owner and another.

The most fundamental distinction in the law of sales is between a contract to sell in the future and a present sale. This distinction is defined in this section and is observed throughout the draft. The phrase "Contract of Sale" used in the English Act has been discarded.

**Section 2.**—[*Capacity — Liabilities for Necessaries.*] Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

This section states the prevailing, though not wholly uniform, doctrine of the existing law. Mechem on Sales, § 122 *et seq.* The section follows *verbatim* section 2 of the English Act except that the words "the sale and" which precede the last word in the section are omitted as introducing a possible ambiguity.

*Formalities of the Contract.*

**Section 3.**—[*Form of Contract or Sale.*] Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

This follows the first part of section 3 of the English Act. That act contains the following proviso which was omitted as unnecessary:

"Provided that nothing in this section shall affect the law relating to corporations."

**Section 4.**—[*Statute of Frauds.*] (1.) A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2.) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not

suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3.) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

Sub-section (1) of this section follows section 4 (1) of the English Act with the exceptions stated below.

The words of the section of the English Act are somewhat altered from those of the seventeenth section of the Statute of Frauds, but the changes are such as to express more accurately the construction previously given by Lord Tenterden's Act and by the courts to the Statute of Frauds. See Chalmers (5th ed.) 16.

In the United States a provision corresponding to the seventeenth section of the Statute of Frauds exists in all the states but Alabama, Arizona, Delaware, Illinois, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and West Virginia.

In the remaining states the language of the statutes is by no means uniform, but the construction given by the courts is generally the same as that which has been given to the English Statute of Frauds, and which is now expressed in the Sale of Goods Act. There are some exceptions, however, to this. In the United States it is generally held that promissory notes, shares of stock and other choses in action "which are subjects of common sale and barter and which have a visible and palpable form," are within the statute. This result is due in some cases to the express inclusion within state statutes of choses in action, but even where the statutes are similar to the English Statute of Frauds, a broader effect has been given to them. Under the definition of goods in Part VI, it is clear that no choses in action would be included (Chalmers, 120), unless choses in action were expressly mentioned. The words "or choses in action" have therefore been inserted in the present draft. Similar words or the broad term "personal property" are found in the Statutes of Frauds now in force in about twenty of the states. ✓ Mechem on Sales, § 287.

The limit of price or value varies considerably in this country, fifty dollars is the commonest limit, but as many important states have no statute corresponding to this section of the Statute of Frauds, and as it is universally recognized that a great deal of fraud is caused by the statute, it seemed wise to raise the limit of price considerably. Thereby small sales which are usually oral will not be affected, but large transactions which by prudent business usage should be in writing will be covered. It should be noticed that the English limit, ten pounds, which has been translated into fifty dollars in many American statutes was fixed at a time when the value of a pound was much greater than it is now.

The first half of sub-section (2) is taken from the English Act which has enacted the rule laid down by *Lee vs. Griffin*, 1 B. & S. 272. Though this rule is the most scientifically exact, and has been so recognized by writers (*e. g.*, Benjamin on Sales, § 103), it has found little support in this country, even in cases decided since *Lee vs. Griffin*. The qualification here added to the English sub-section is intended to reproduce the rule laid down by Shaw, C. J., in *Mixer vs. Howarth*, 21 Pick. 205, and by Ames, J., in *Goddard vs. Binney*, 115 Mass. 450. The New York rule is still different, and in other states the line may not always be drawn at exactly the same point. The authorities are collected in Mechem, §§ 304-326, and the conclusion drawn in § 326 seems justified by the cases and justifies the form of this proposed draft: "The Massachusetts rule seems likely to be received with favor wherever the courts are not debarred by earlier decisions from adopting it."

Sub-section (3) differs from the corresponding English provision, which enacts the rule first laid down in *Kibble vs. Gough*, 38 L. T. n. s. 204, that any recognition of a pre-existing contract in regard to the goods is an acceptance, though accompanied by no assent, or indeed expressing dissent to the carrying out of the bargain. This rule has not been adopted anywhere in the United States, and the provision here suggested represents the American rule, as well as the early English rule. See Mechem, § 357 *et seq.*

*Subject Matter of Contract.*

**Section 5.**—[*Existing and Future Goods.*] (1) The goods which form the subject of a contract to sell may be

either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2.) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

This section follows section 5 of the English Act except that contract to sell is here as elsewhere substituted for "contract of sale" and "contract for the sale." Also in sub-section (3) "parties purport" is substituted for "seller purports." As the intention of the buyer is as important as that of the seller, the substituted expression is the more accurate.

**Section 6.**—[*Undivided Shares.*] (1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2.) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

These provisions are new, and 6 (2) at least probably does not express the English law. It expresses the doctrine of *Kimberly vs. Patchin*, 19 N. Y. 330, which is supported by the weight of recent American authority, though there are adverse

decisions. See Mechem, § 704 *et seq.* It is to be noticed that it is provided only that title *may* pass under the suggested circumstances. The presumption would in most cases be that it did not pass because not intended to pass until separation. See section 19.

**Section 7.**—[*Destruction of Goods Sold.*] (1.) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2.) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated, in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a.) As avoided, or

(b.) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Sub-section (1) corresponds to section 6 of the English Act. The English section does not seem to cover the contingency of deterioration or partial destruction and sub-section (2) has been added for that purpose. The section is believed to express the existing law.

**Section 8.**—[*Destruction of Goods Contracted to be Sold.*]

(1.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—



(a.) As avoided, or

(b.) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

Sub-section (1) corresponds to section 7 of the English Act. Sub-section (2) is added to cover the case of deterioration or partial destruction. The section is believed to express the existing law.

### *The Price.*

#### **Section 9.**—[*Definition and Ascertainment of Price.*]

(1.) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2.) The price may be made payable in any personal property.

(3.) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4.) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sub-sections (1) and (4) are substantially the same as section 8 of the English Act. Sub-section (2) is changed from the English law which in section 1 (1) requires a "money consideration." The common definition of sale also requires the price to be in money. This definition is copied from the Roman Law. In that law different rules of law were applicable to contracts of sale and of barter. This is not true in our law. Even the Statute of Frauds, where the word "sale" is used has been held applicable to contracts of barter. Browne, Stat. Frauds, § 293. As the rules of law applicable to barter are the same as those applicable to sale, it seemed desirable to

bring cases of barter within the meaning of sale in this draft. On the other hand, different principles are often applicable where a bargain concerns real estate and such cases are, therefore, expressly excluded by sub-section (3).

**Section 10.**—[*Sale at a Valuation.*] (1.) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by Parts IV and V of this act.

Slightly varied from section 9 of the English Act.

*Conditions and Warranties.*

**Section 11.**—[*Effect of Conditions.*] (1.) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2.) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Section 11 of the English Act authorizes not only the waiver of a condition, but the election to treat any condition to be fulfilled by the seller as a breach of warranty. The use

of condition as including promise or warranty does not seem happy. Chalmers (5th ed.), p. 174, says, "In conveyancing a distinction was drawn between conditions and covenants, which in contracts has now become obliterated." It is very unfortunate if the distinction should become obliterated, for the legal ideas are distinct and should have distinct names. Doubtless the performance of promises in many cases operates as a condition, but all promises are not conditions, and still more emphatically all conditions are not promises.

**Section 12.**—[*Definition of Express Warranty.*] Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

The English Act does not define when language amounts to warranty. There is considerable division of authority on the point. The section as drawn is supported by Stroud *vs.* Pierce, 6 Allen 413, 416; Kenner *vs.* Harding, 85 Ill. 264, 268; Ormsby *vs.* Budd, 72 Ia. 80; McClintock *vs.* Enrick, 87 Ky. 160; Hawkins *vs.* Pemberton, 51 N. Y. 198; Fairbanks Co. *vs.* Metzger, 118 N. Y. 260; Hobart *vs.* Young, 63 Vt. 363; Herron *vs.* Debbrell, 87 Va. 289.

Many authorities, however, require further that the seller shall have intended to warrant. See Mechem, § 1224 *et seq.* But this is believed to be unsound for both theoretical and practical reasons. On theory the fundamental basis for liability on warranty is the justifiable reliance on the seller's assertions. Whether the buyer was justified in his reliance depends not on the intent of the seller, but on the natural tendency of his acts. As a practical matter, the section as drawn does not seem to set up an unreasonably high standard of morality. The tendency of the courts has been distinctly in the direction of greater strictness against seller's statements. See Mechem, page 1072, note 1.

**Section 13.**—[*Implied Warranties of Title.*] In a contract to sell or a sale, unless a contrary intention appears, there is—

(1.) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.

(3.) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

This section is copied from the English section 12, except (4), which is an addition. There are a few American decisions and more dicta that there is no warranty of title where the vendor is out of possession. But the weight of recent authority is against this distinction. See Mechem, § 1302. (4) represents the English as well as the American law, and it seemed best to make an express provision.

**Section 14.**—[*Implied Warranty in Sale by Description.*] Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

This section is identical in meaning with section 13 of the English Act and identical in language except for the use of the words "contract to sell" and "sale" instead of the English words "contract for the sale" and "sale"; and the substitution of the word "warranty" for "condition," which is used in the English Act as including both condition proper and promise. The meaning of the word "condition" is restricted in this draft to condition proper. As breach of warranty

justifies rejection of the goods, and also an action for damages under this draft, the full meaning of the English provision is retained.

**Section 15.**—*Implied Warranties of Quality.*] Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows :

(1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2.) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3.) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4.) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6.) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

This section follows section 14 of the English Act. As originally drafted sub-section (1) was limited to the case where the seller was the grower or manufacturer, in conformity with the probable weight of authority. See Mechem, §§ 1314-1318. The rule in New York is still more restricted, and does not hold even a grower or manufacturer liable if the

defect was due to latent defects in the material purchased and there was no negligence. *Hoe vs. Sanborn*, 21 N. Y. 552. See also California Code, § 1769. (See contra, *Randall vs. Newson*, 2 Q. B. D. 102; *Rodgers vs. Niles*, 11 Ohio St. 48, 56; *Leopold vs. Van Kirk*, 27 Wis. 152.) The tendency of recent decisions, however, has been strongly in the direction of extending the doctrines of implied warranty, and it was thought best in fixing the law in statutory form to follow exactly the English model.

*Sale by Sample.*

**Section 16.**—[*Implied Warranties in Sale by Sample.*]

In the case of a contract to sell or a sale by sample:

(a.) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b.) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c.) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

This follows substantially section 15 of the English Act.

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PART II.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

**Section 17.**—[*No Property Passes until Goods are Ascertained.*] Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6.

This section follows section 16 of the English Act except for the addition of the clause beginning "but," etc. See

under section 6 for explanation of the difference between English and American law on the point referred to.

**Section 18.**—[*Property in Specific Goods Passes when Parties so Intend.*] (1.) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2.) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case.

Follows section 17 of the English Act.

**Section 19.**—[*Rules for Ascertaining Intention.*] Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

**Rule 1.**—Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

**Rule 2.**—Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

**Rule 3.**—(1.) When goods are delivered to the buyer “on sale or return,” or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revert the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2.) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a.) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction :

(b.) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4.—(1.) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2.) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5.—If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

This section follows section 18 of the English Act with some changes. The first rule is altered by omitting from the end the words "and the buyer has notice thereof." The insertion of these words in the English Act changed the English law, which had never required notice (see Chalmers. p. 46), in order to make it conform to the Scotch law. There seems



no good reason for postponing the transfer of title to this extent. There is no American authority for it.

The English Rule 3 which is omitted is as follows :

"Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done."

This rule, however, is based on decisions which followed a rule of the Roman Law. In the Roman Law the rule was based on a special reason that never existed in the Common Law. Blackburn on Sales, 175. Moreover, the rule was originally laid down in the English Law, as it is in the Civil Law, as an absolute rule, not a rule of presumption, to ascertain intention, as it has become in modern English Law. As a rule of presumption, it is artificial and has been discarded in New York and some other states. See Mechem, § 515 *et seq.* It was, therefore, deemed wise to omit it.

Rule 3 (1) is not in the English Act. In that act, a "sale or return" is included in the provision corresponding to Rule 3 (2) of this draft (section 18, Rule 4 of English Act), thereby making the same presumption apply to such sales as to sales on trial. The distinction between a sale with a right to return and a sale to take effect on approval has not been taken in the English decisions, though Chalmers notices it in his annotation. 9 Harv. L. Rev. 110, n. 3. The distinction has been taken in this country (Mechem, § 657 *et seq.*, § 675 *et seq.*), and it seems proper to indicate it in this draft.

Rule 3 (2) is the same as Rule 4 of the English Act, except that the words "on trial or on satisfaction" are substituted for "on sale or return."

In Rule 4 (2) the last sentence is not in the English Act. It settles a disputed question in accordance with the weight of authority. See 4 Columbia L. Rev., 541; Mechem, §§ 733, 741.

Rule 5 is not in the English Act, but it represents the existing law.

**Section 20.**—[*Reservation of Right of Possession or Property when Goods are Shipped.*] (1.) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the

contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2.) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3.) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4.) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Sub-section (1) follows with some change of expression, section 19 of the English Act except that for the somewhat loose

phrase "right of disposal" is substituted "possession or property." The phrase *jus disponendi* has gained some currency as the expression of the right of a seller who has definitely appropriated goods to a contract, but who nevertheless takes a bill of lading to his own order. The truth is he has reserved the property as security. The situation is similar to that in a conditional sale.

The first sentence of sub-section (2) is in the English Act, except that "property in the goods" is substituted for "right of disposal." The remainder of the sub-section is new.

Sub-section (3) is not in the English Act, but is thought to be warranted by the existing law.

Sub-section (4) substantially follows the English Act as far as the words "If, however." The proviso beginning "If, however," is not in the English Act. It expresses, nevertheless, the English law, because of the last factors' act. *Cahn vs. Packet Co.* (1899), 1 Q. B. 648. It undoubtedly is in accordance with mercantile understanding and convenience. The seller has trusted the buyer with the possession of the document of title and should bear the consequences. See *Mechem*, § 166.

**Section 21.**—[*Sale by Auction.*] In the case of sale by auction—

(1.) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2.) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3.) A right to bid may be reserved expressly by or on behalf of the seller.

(4.) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any

person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

This follows section 58 of the English Act, and is believed to express the existing law.

**Section 22.**—[*Risk of Loss.*] Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a.) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b.) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

The exception (a) is not contained in the English Act. Otherwise the section is in substance the same as section 20 of the English Act. The new exception represents the weight of authority and seems sound on principle. The principal situation at which it is aimed is where a conditional sale has been made, the goods delivered to the buyer, and very likely in use by him. The title is retained instead of taking a mortgage back, as would be done in the case of real estate. The beneficial interest is in the buyer, and the risk should be on him. See 9 Harv. L. Rev. 109; Mechem, § 635.

Where goods are sent in compliance with an order, but marked "C.O.D.," even though the effect of this were to withhold the title (as to which, however, see section 19, Rule 4 (2), the risk would be thrown on the buyer. See Mechem, § 740, note (p. 616).

#### *Transfer of Title.*

**Section 23** —[*Sale by a Person not the Owner.*] (1). Subject to the provisions of this act, where goods are sold by a

person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2.) Nothing in this act, however, shall affect—

(a.) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b.) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

This follows section 21 of the English Act, except in (2) (a) "recording acts" has been added.

**Section 24.**—[*Sale by one Having a Voidable Title.*] Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

This follows section 23 of the English Act. Section 22 of that act relates to sales in market overt and is omitted here.

**Section 25.**—[*Sale by Seller in Possession of Goods already Sold.*] Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

This follows section 25 (1) of the English Act. It is comparatively new to the English law, being first enacted in the Factors' Act of 1889. But, so far as purchasers are concerned,

it states in effect the principle commonly laid down in this country, that delivery is not necessary between the parties, but is as against third persons. The rights of creditors are dealt with in the next section. Section 25 (2) of the English Act provides that a buyer in possession without title shall have power to transfer title. This is contrary to American law and has been omitted. Mechem, § 599.

**Section 26.**—[*Creditors' Rights against Sold Goods in Seller's Possession.*] Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

The law in this country as to the effect of retention of possession on the rights of creditors is in such conflict and the different rules are locally so firmly fixed that it seemed unwise to try to provide a uniform rule. All states, however, agree that if the retention is fraudulent in fact, the sale is void as to creditors. The draft, therefore, so provides, and as to other cases—cases of constructive fraud—adopts the locally prevailing rule.

**Section 27.**—[*Definition of Negotiable Document of Title.*] A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

This definition, following as it does the definition of negotiable promises to pay money, represents the mercantile understanding in regard to documents of title.

**Section 28.**—[*Negotiation of Negotiable Documents by Delivery.*] A negotiable document of title may be negotiated by delivery.

(a.) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b.) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to

deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

Here too both mercantile practice and the analogy of bills and notes are followed.

**Section 29.**—*Negotiation of Negotiable Documents by Indorsement.*] A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

The note to the preceding section is again applicable.

**Section 30.**—*[Negotiable Documents of Title Marked "Not Negotiable."]* If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable" "non-negotiable," or the like.

It is a well-known custom of the railroads to stamp upon bills of lading, even though running to order or assigns, the words "not negotiable." The object of carriers in so doing seems to be to limit their own liability, but not to interfere with the transfer of the bills between buyer and seller or with the practice of the banks to advance money on such bills. How far the carrier is justified in attempting to limit its liability by such a device may be questioned, but as this act is concerned not with the liability of the carrier, but with the rights of the various holders of the bill of lading as against each other, it seemed wise to provide merely that as between those parties the words "not negotiable" do not change the legal effect of the document.

**Section 31.**—[*Transfer of Non-Negotiable Documents.*]

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt cannot be negotiated and the indorsement of such a receipt gives the transferee no additional right.

The distinction between warehouse receipts and bills of lading negotiable in form and those which are not does not seem to be observed in the English decisions; but it is observed in this country both in the usages of warehousemen and carriers and in the decisions of the courts. See *Hallgarten vs. Oldham*, 135 Mass. 1; *Gill vs. Frank*, 12 Oreg. 507; *Forbes vs. Boston & Lowell R. R.*, 133 Mass. 154; *Litchfield Bank vs. Elliott*, 83 Minn. 469.

**Section 32.**—[*Who May Negotiate a Document.*] A negotiable document of title may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.



By this section a negotiable document of title is not given the full negotiability of a bill of exchange, inasmuch as neither a thief nor a finder is within the terms of the section. Any person entrusted with a document running to bearer or indorsed in blank, irrespective of the terms of the trust is intended to be given the power of negotiating. While the true owner may claim protection against the theft or accidental loss, if he has voluntarily given such paper to a servant or agent he should bear the loss in case of a wrongful disposition of the document by the servant or agent, rather than a *bona fide* purchaser.

**Section 33.**—[*Rights of Person to Whom Document Has Been Negotiated.*] A person to whom a negotiable document of title has been duly negotiated acquires thereby,

(a.) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.

This section follows the custom of merchants. It makes the document represent the depositor's right in the goods, so that a purchaser of the document, if he acquires a good title thereto, acquires not simply the rights of his vendor, but whatever property the original depositor had, that being what the document represented. 32 (b) makes the obligation of the warehouseman in regard to the goods negotiable.

Many states already have statutes making warehouse receipts negotiable. Mohun on Warehousemen, 944; and some states have statutes in regard to bills of lading, *ibid.* 848, but these statutes have generally been so brief and general in terms that they have been variously construed and have to some extent failed of their purpose. See *Shaw vs. Railroad Co.*, 101 U. S. 557.

This section and the preceding are of fundamental importance to merchants and bankers. They state familiar law in

regard to bills and notes and there is authority for them both in the statutes making warehouse receipts and bills of lading negotiable, and also in common law decisions. *Pollard vs. Reardon*, 65 Fed. Rep. 848 (C. C. A.); *Munroe vs. Philadelphia Warehouse Co.*, 75 Fed. Rep. 545. See also *Commercial Bank vs. Armsby Co.*, 120 Ga. 74. But the language at least of other cases would seem to indicate the theory that the form of a document of title, though negotiable, is only evidence of intention and that other evidence is admissible to show intention, to transfer or retain title even as against innocent third persons. See *The Carlos F. Roses*, 177 U. S. 655, 665; *Washburn Crosby Co. vs. Boston & Albany R. R. Co.*, 180 Mass. 252, 257; *Neimeyer Lumber Co. vs. Burlington & Mo. R. R. Co.* 54 Neb. 321.

**Section 34.**—[*Rights of Person to Whom Document Has Been Transferred.*] A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

This section states the right of any purchaser of bailed goods. One who purchases, therefore, a non-negotiable document of title would gain nothing from the transfer of the document except evidence.

**Section 35.**—[*Transfer of Negotiable Document without Indorsement.*] Where a negotiable document of title is trans-

ferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes, Crawford, Neg. Inst. Law, § 79.

**Section 36.**—[*Warranties on Sale of Document.*] A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a.) That the document is genuine.
- (b.) That he has a legal right to negotiate or transfer it.
- (c.) That he has knowledge of no fact which would impair the validity or worth of the document, and
- (d.) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

This section except (d) follows the Negotiable Instruments Law, Crawford, § 115. (d) it is believed states the existing law.

**Section 37.**—[*Indorser not a Guarantor.*] The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations.

Mercantile usage in regard to documents of title differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law, even in jurisdictions where statutes have made documents of title negotiable.

Shaw vs. Railroad Co., 101 U. S. 557; Mida vs. Geissmann, 17 Ill. App. 207.

**Section 38.**—[*When Negotiation not Impaired by Fraud, Mistake or Duress.*] The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

This section merely elaborates for the sake of clearness certain special cases within the terms of section 32.

**Section 39.**—[*Attachment or Levy upon Goods for which a Negotiable Document Has Been Issued.*] If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levied upon them could be permitted while the negotiable document was outstanding. For the mercantile theory is founded upon the idea that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason it is not admissible for the bailee to deliver the goods without taking up an outstanding negotiable receipt for them, and for the law to allow attachment or levy upon the goods, regardless of outstanding negotiable documents. For a similar reason the maker of

negotiable notes is protected by garnishment: in most states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper. Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. *Clews vs. Friedman*, 180 Mass. 55. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier cannot be garnished, 14 Am. & Eng. Encyc. of Law, 810. A transfer of the bill of lading prevails over a subsequent attachment, *Mather vs. Gordon*, 59 At. Rep. 424 (Conn.); *Robert C. White Co. vs. Chicago & C. R. R. Co.*, 87 Mo. App. 330; *Union Bank vs. Rowan*, 23 S. C. 339; and in *Peters vs. Elliott*, 78 Ill. 321, it was held that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this draft not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable document was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the document be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable document and the property covered thereby.

**Section 40.**—[*Creditors' Remedies to Reach Negotiable Documents.*] A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by the preceding section, section 40 gives the creditor such rights as are included under the heads of bills of equitable attachment or in aid of execution.

## PART III.

## PERFORMANCE OF THE CONTRACT.

**Section 41.**—[*Seller Must Deliver and Buyer Accept Goods.*] It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

This follows section 26 of the English Act.

**Section 42.**—[*Delivery and Payment are Concurrent Conditions.*] Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions ; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

This follows section 27 of the English Act.

**Section 43.**—[*Place, Time and Manner of Delivery.*]  
(1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence ; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2.) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the

buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

This is the same as section 29 of the English Act, except that the second half of sub-section (3) has been added. The section is believed to state the existing law.

**Section 44.**—[*Delivery of Wrong Quantity.*] (1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

This follows section 30 of the English Act, and is in accordance with the weight of authority. See *Mechem*, § 1157 *et seq.*

**Section 45.**—[*Delivery in Instalments.*] (1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2.) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

This section is slightly altered from section 31 of the English Act. The English Act, following prior English decisions, makes repudiation by one party the test of the right of the other to refuse to go on. The section here given makes the materiality of the breach the test. This is in accord with the weight of American authority. *Norrington vs. Wright*, 115 U. S. 188, 14 Harv. L. Rev. 323.

**Section 46.**—[*Delivery to a Carrier on Behalf of the Buyer.*] (1.) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, Rule 5, or unless a contrary intent appears.

(2.) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so



to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(8.) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

These paragraphs follow with slight changes section 32 of the English Act. (1) is familiar law. (2) and (3) are probably in accordance with the business usage, but there is little in the way of positive law on the subject. See Chalmers (5th ed.), p. 73.

**Section 47.**—[*Right to Examine the Goods.*] (1.) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3.) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

Section 47 (1) and (2) follow section 34 of the English Act, and state the American law also. Mechem, § 1375 *et seq.*

Sub-section (3) is new. It states the actual practice of the large express companies and probably states the existing law. *Wiltse vs. Barnes*, 46 Ia. 210.

**Section 48.**—[*What Constitutes Acceptance.*] The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

This follows section 35 of the English Act, and represents the American law also. *Mechem*, § 1379 *et seq.*

**Section 49.**—[*Acceptance Does not Bar Action for Damages.*] In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor.

This section is not contained in the English Act, but section 11 (1) (a) of that act seems to authorize the buyer to accept goods and nevertheless hold the seller liable in damages. The latter half of the section in this draft imposes a qualification sanctioned by good business practice and to some extent by law, both in this country and in Europe.

The law in this country is in great conflict. See *Mechem*, § 1388 *et seq.*

**Section 50.**—[*Buyer is not Bound to Return Goods Wrongly Delivered.*] Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

This follows section 36 of the English Act. Such American authority as there is is in accord. Mechem, § 1403.

**Section 51.**—[*Buyer's Liability for Failing to Accept Delivery.*] When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

This follows substantially section 37 of the English Act, except for the addition of breach of the entire contract as an equivalent of repudiation. See note to section 45.

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#### PART IV.

##### RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

**Section 52.**—[*Definition of Unpaid Seller.*] (1.) The seller of goods is deemed to be an unpaid seller within the meaning of this act—

(a.) When the whole of the price has not been paid or tendered.

(b.) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2.) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly

responsible for, the price, or any other person who is in the position of a seller.

This follows section 38 of the English Act, except that in (1) (b) "has been broken" is substituted for "has not been fulfilled" and "the insolvency of the buyer" has been inserted.

**Section 3.**—[*Remedies of an Unpaid Seller.*] (1.) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

(a.) A lien on the goods or right to retain them for the price while he is in possession of them.

(b.) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them.

(c.) A right of resale as limited by this act.

(d.) A right to rescind the sale as limited by this act.

(2.) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage "*in transitu*" where the property has passed to buyer.

This follows section 39 of the English Act, except for the insertion of 1 (d), which is in conformity with the American law and with business usage. Mechem, § 1682.

#### *Unpaid Seller's Lien.*

**Section 54.**—[*When Right of Lien may be Exercised.*]

(1.) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a.) Where the goods have been sold without any stipulation as to credit.

(b.) Where the goods have been sold on credit, but the term of credit has expired.

(c.) Where the buyer becomes insolvent

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

This follows section 41 of the English Act.

**Section 55.**—[*Lien after Part Delivery.*] Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

This follows section 42 of the English Act.

**Section 56.**—[*When Lien is Lost.*] (1.) The unpaid seller of goods loses his lien thereon—

(a.) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

(b.) When the buyer or his agent lawfully obtains possession of the goods.

(c.) By waiver thereof.

(2.) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

This substantially follows section 43 of the English Act.

*Stoppage in Transitu.*

**Section 57.**—[*Seller may Stop Goods on Buyer's Insolvency.*] Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

This follows section 44 of the English Act with two exceptions. In the last clause the English Act reads, "and may retain them until payment or tender of the price." But the

seller under such circumstances has also the right to resell, and under this draft the right to rescind the sale. In the second line the words "is or" have been inserted, so as to make it clear that the seller's right exists even though the buyer were insolvent at the time of the sale. In *Rogers vs. Thomas*, 20 Conn. 54, it was said that there would be no right of stoppage unless the insolvency arose after the sale; but this case has been uniformly criticised and would probably not be followed even in Connecticut. Mechem, § 1541.

**Section 58.**—[*When Goods Are in Transit.*] (1.) Goods are in transit within the meaning of section 57—

(a.) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b.) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2.) Goods are no longer in transit within the meaning of section 57:

(a.) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c.) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3.) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4.) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods

may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

This follows section 45 of the English Act, but with considerable changes in wording and arrangement. The section is believed to state the existing law.

**Section 59.**—[*Ways of Exercising the Right to Stop.*]

(1.) The unpaid seller may exercise his right of stoppage *in transitu* either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2.) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such redelivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation.

This follows section 46 of the English Act, except the final proviso. The carrier should be liable to a *bona fide* transferee of its bill of lading, and unquestionably would be at common law if the transferee took for value before the stoppage. Even though the transferee took after the notice of stoppage, he is protected by section 62. The carrier therefore ought not to be obliged or allowed to surrender the goods unless the document of title is surrendered.

*Resale by the Seller.*

**Section 60.**—[*When and How Resale May be Made.*]

(1.) Where the goods are of a perishable nature, or where the

seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods *in transitu* may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3.) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4.) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5.) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

This section differs considerably from section 48 of the English Act. The wording of that section did not seem wholly adequate.

Section 48 (2) of the English Act seems to provide that the resale, whether rightly made or not, so long as it is made by a seller having a lien, gives a good title, and section 8 of the Factor's Act of 1889, providing that any seller in possession has power to make a valid sale or pledge, squares with this; but the provision seems somewhat drastic for this country. See Mechem, § 1644. The requirements as to delivery and change of possession in this draft would generally protect the purchaser on the resale if he got delivery, and this seems far enough to go.



The point covered by (3) is much disputed. The English law requires notice where the goods are not perishable, and some cases so hold in this country. Others reach a contrary result. See *Mechem*, § 1633. On the one hand, it seems undesirable to make a resale invalid under all circumstances for lack of notice. The lapse of time or other circumstances might make it highly unjust to allow the buyer later, when perhaps market prices had risen, to make such a claim. On the other hand, it seems desirable that notice should generally be given. The provision suggested will have the effect, it is hoped, of making notice necessary unless the default of the buyer is very clear and long continued. (4) expresses the law. *Mechem*, § 1637.

*Rescission by the Seller.*

**Section 61.**—[*When and How the Seller may Rescind the Sale.*] (1.) An unpaid seller having a right of lien or having stopped the goods *in transitu*, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

This section is not contained in the English Act, and the remedy for which the section provides is not allowed by English law. It is allowed in this country, and seems fully justified by mercantile custom and convenience. *Mechem*, § 1681, 1682; *Burdick*, p. 248.

**Section 62.**—[*Effect of Sale of Goods Subject to Lien or Stoppage in Transitu.*] Subject to the provisions of this act, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage *in transitu* shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier or other bailee who issued such document, of the seller's claim to a lien or right of stoppage *in transitu*.

This section is based on section 47 of the English Act. The proviso is, however, made more far reaching than in the English Act in order to cover a case which does not seem to have arisen or to have been considered in England, namely, where a bill of lading is transferred to an innocent purchaser for value after notice to stop has been given. The only case is *Newhall vs. Central Pac. R. R.*, 51 Cal. 345, which protects the purchaser. This case has been criticised. See *Mechem*, § 1567; *Burdick*, p. 236; *Hutchinson on Carriers*, § 414. But it seems clearly better to limit the right of stoppage *in transitu* of a seller who has entrusted the buyer with a perfect apparent title than to deprive the innocent purchaser of the goods.

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## PART V.

### ACTIONS FOR BREACH OF THE CONTRACT.

#### *Remedies of the Seller.*

**Section 63.**—[*Action for the Price.*] (1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2.) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3.) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

(1) and the first half of (2) follow the English act. The addition to (2) beginning "but," etc., is believed to be justified by the weight of American authority.

(3) is not law in England, nor is it in a number of American states. On the other hand, the New York court, in an often quoted passage, allows the remedy to an unpaid vendor generally without any qualification as to the nature of the goods. It is also allowed in the civil law. The rule suggested goes as far as convenience requires, for if the goods can readily be resold, the action for damages affords adequate relief. See Mechem, § 1694.

**Section 64.**—[*Action for Damages for Non-Acceptance of the Goods.*] (1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4.) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

This follows section 50 of the English Act, except (4), which is added. (4) is not law in England, but it is in this country except in Illinois. See 14 Harv. L. Rev. 422; Mechem, § 1700 *et seq.* The provision does not require the seller to cease performance in every case. There may be cases where the damage caused by stopping performance would be greater than that caused by finishing the necessary work. See *Southern Cotton Oil Co. vs. Hefin*, 99 Fed. Rep. 339. In such a case the seller might complete performance, and recover damages based on completed performance.

**Section 65.**— [*When Seller May Rescind Contract or Sale.*] Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

Section 61 allows the seller to rescind the transfer of title in the cases there covered. The rescission of all contractual

obligation between the parties—a more extensive right—is covered by this section, which is believed to express the American law.

*Remedies of the Buyer.*

**Section 66.**—[*Action for Converting or Detaining Goods.*] Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

This section, which is not contained in the English Act, allows trover, replevin, equitable or other relief, as the local law may warrant.

**Section 67.**—[*Action for Failing to Deliver Goods.*] (1.) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

(2.) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

This follows section 51 of the English Act.

**Section 68.**—[*Specific Performance.*] Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without

giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just.

This follows, with slight changes in wording, section 52 of the English Act.

**Section 69.**—[*Remedies for Breach of Warranty.*] (1.) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a.) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price.

(b.) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty.

(c.) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty.

(d.) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2.) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3.) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4.) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5.) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53.

(6.) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7.) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

This section differs materially from the corresponding section of the English Act—section 53. This draft allows rescission as a remedy for breach of warranty. The English law does not. In defense of the remedy of rescission, see an article by the draftsman in 16 Harv. L. Rev. 465. This article led to a discussion with Professor Burdick, who supported the English doctrine. See 4 Columbia L. Rev. 1, 195, 265; 17 Harv. L. Rev. 500. Further, the English Act, following *Mondel vs. Steel*, 8 M. & W. 858, allows the buyer to recoup his damages in an action for the price and thereafter to bring an action for damages. This seems erroneous, see *Watkins vs. American Bank*, 134 Fed. Rep. 36 (C. C. A.), and has been changed in this draft.

**Section 70.**—[*Interest and Special Damages.*] Nothing in this act shall affect the right of the buyer or the seller to recover

interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

This follows section 54 of the English Act.

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## PART VI.

### INTERPRETATION.

**Section 71.**—[*Variation of Implied Obligations.*] Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.

This follows section 55 of the English Act.

**Section 72.**—[*Rights May be Enforced by Action.*] Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action.

This follows section 57 of the English Act.

**Section 73.**—[*Rule for Cases not Provided for by this Act.*] In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods.

This provision seems obviously desirable.

**Section 74.**—[*Interpretation Shall Give Effect to Purpose of Uniformity.*] This act shall be so interpreted and construed, if possible, as to effectuate its general purpose to make uniform the laws of those states which enact it.

This section introduces a new principle of statutory interpretation. It is, however, obviously a proper principle in regard



to statutes, the primary object of which is to make the law uniform.

**Section 75.**—[*Provisions not Applicable to Mortgages.*] The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

This follows section 60 (2) of the English Act, except for the words “unless so stated.” Though the draft does not generally purport to deal with the peculiar rules of mortgage law, there are a few places in which mortgage relations or similar ones are covered, *e. g.*, sections 20 (2), 22 (a).

**Section 76.**—[*Definitions.*] (1.) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off and suit in equity.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2.) A thing is done "in good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3.) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4.) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

The only one of these definitions requiring comment is that of value, which follows the weight of authority at common law and the provision of the Negotiable Instruments Law as intended by its framers. In regard to property other than negotiable instruments the law of many states does not regard an antecedent debt as value; but it seems desirable to have a single rule for what constitutes valuable consideration, and mercantile convenience supports the one adopted. It is supported, moreover, by the law of England and a few of our states. See Williston's Cases on Sales (2d ed.) 369, n.

**Section 77.**—[*Inconsistent Legislation Repealed.*] All acts or parts of acts inconsistent with this act are hereby repealed.

**Section 78.**—[*Time when the Act Takes Effect.*] This act shall take effect on the                      day of                      one thousand nine hundred and

**Section 79.**—[*Name of Act.*] This act may be cited as the Sales Act.

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW OF  
WAREHOUSE RECEIPTS.

*(Approved in final form.)*

Be it enacted, etc., as follows :

PART I.

THE ISSUE OF WAREHOUSE RECEIPTS.

**Section 1.**—[*Persons Who may Issue Receipts.*] Warehouse receipts may be issued by any warehouseman.

This should be read in connection with the definition of warehouseman in section 58. On account of varying local conditions and laws it seemed impracticable in an act intended to be passed in many states to fix limits as to who might carry on the business of warehousing.

**Section 2.**—[*Form of Receipts. Essential Terms.*] Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a.) The location of the warehouse where the goods are stored,

(b.) The date of issue of the receipt,

(c.) The consecutive number of the receipt,

(d.) A statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order,

(e.) The rate of storage charges,

(f.) A description of the goods or of the packages containing them,

(g.) The signature of the warehouseman, which may be made by his authorized agent,

(h.) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i.) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

This section is in accordance with business custom except (h) and (i). As some abuses have arisen from warehousemen issuing receipts on their own goods, it seemed wise that when they issued negotiable receipts in this way, the document should carry notice of the fact on its face. See Section 53 in this connection. It is obvious also that negotiable receipts should show on their face what charges are claimed against the goods. See further as to this Section 80.

Though it is desired that all warehouse receipts shall conform to the rules here laid down, the essential thing is that negotiable receipts shall do so, and as to them only is a sanction imposed for failing to insert the statutory terms.

**Section 3.**—[*Form of Receipts. What Terms may be Inserted.*] A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a.) Be contrary to the provisions of this act.

(b.) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Public policy demands that in the case of warehousemen, as well as in the case of carriers, where the question has more often arisen, a contract to be freed from the consequences of negligence should not be allowed. See Schouler on Bailments (1905), §§ 36, 362 *et seq.*

**Section 4.**—[*Definition of Non-Negotiable Receipt.*] A receipt in which it is stated that the goods received will be

delivered to the depositor or to any other specified person is a non-negotiable receipt.

See note to the following section.

**Section 5.**—[*Definition of Negotiable Receipt.*] A receipt in which it is stated that the goods received will be delivered to the bearer or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

This draft makes a fundamental distinction throughout between negotiable and non-negotiable receipts. The former is the negotiable representative of the goods, the latter is merely evidence of an ordinary contract of bailment. This distinction accords with mercantile usage, and though in many places the law is not clear, the prevailing legal understanding agrees with the mercantile usage. *Hallgarten vs. Oldham*, 135 Mass. 1.

**Section 6.**—[*Duplicate Receipts must be so Marked.*] When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

It is the practice of most if not all careful warehousemen not to issue duplicate negotiable receipts at all, and such issues are to be discouraged, but following a large number of statutes already existing, this act instead of forbidding the practice altogether safeguards it by requiring the receipt to be plainly marked.

**Section 7.**—[*Failure to Mark "Not Negotiable."*] A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable" or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing

it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda or written acknowledgments of an informal character.

This section, like the preceding, is aimed at obvious frauds. Both follow much existing legislation. See passages in Mohun on Warehousemen, indexed at pages 943, 944.

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## PART II.

### OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS.

**Section 8.** [*Obligation of Warehouseman to Deliver.*] A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a.) An offer to satisfy the warehouseman's lien,
- (b.) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and
- (c.) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

See the definition of "holder" in Section 58. The requirement of signing an acknowledgment that the goods have been received is in accordance with universal business usage, though it is doubtful if the usage has been supported by law. As the usage is reasonable, it is adopted as the rule of this act. The burden imposed on the warehouseman in the last paragraph agrees with existing law. *Burnell vs. N. Y. C. R. R. Co.*, 45 N. Y. 184.

**Section 9.**—[*Justification of Warehouseman in Delivering.*] A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a.) The person lawfully entitled to the possession of the goods, or his agent,

(b.) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c.) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

This section gives the warehouseman a justification in some cases where he would not under the preceding section be bound to deliver, *e. g.* If a thief presented a negotiable receipt properly indorsed, the warehouseman would be protected if he delivered the goods innocently.

**Section 10.**—[*Warehouseman's Liability for Misdelivery.*] Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by sub-divisions (b) and (c) of the preceding section, and though he delivered the goods as authorized by said sub-divisions he shall be so liable, if prior to such delivery he had either

(a.) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b.) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

This is believed to represent the law. See Schouler (1905), §§ 44, 45; *Velsian vs. Lewis*, 15 Oreg. 539.



**Section 11.**—[*Negotiable Receipts must be Cancelled when Goods Delivered.*] Except as provided in Section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

It is an obvious requirement of the mercantile use of negotiable receipts that the goods shall remain in the warehouse as long as the receipt is outstanding, and statutes similar in effect to this section are in force in some states. Mohun, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable receipts, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt.

**Section 12.**—[*Negotiable Receipts must be Cancelled or Marked when Part of Goods Delivered.*] Except as provided in Section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

This section follows as to partial deliveries the rule of the preceding.

**Section 13.**—[*Altered Receipts.*] The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a.) Immaterial,

(b.) Authorized, or

(c.) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

This section adopts the prevailing rule of the common law. Even fraudulent alteration cannot divest the title of the owner of stored goods and the warehouseman is therefore liable to redeliver them to the owner.

**Section 14.**—[*Lost or Destroyed Receipts.*] Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable cost and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

As it is for obvious reasons forbidden and indeed made a criminal offense (Section 52) to issue an additional negotiable

receipt, it is evident that great care must be used in permitting such an issue, or what is the same thing, the redelivery of the goods without the surrender of the original receipt. It is not enough that the parties agree that the goods shall be given up or a new receipt issued. It is essential that a court shall pass upon the question and make sure that the original is lost or destroyed and that a proper indemnity is taken, for the rights of possible innocent purchasers of the original receipt are involved.

**Section 15.**—[*Effect of Duplicate Receipts.*] A receipt upon the face of which the word “duplicate” is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

See note to Section 6.

**Section 16.**—[*Warehouseman cannot set up Title in Himself.*] No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

This states the common law. 3 Am. & Eng. Encyc. of Law, 759.

**Section 17.**—[*Interpleader of Adverse Claimants.*] If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

The case of *Crawshay vs. Thornton*, 2 Myl. & C. 1, unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy and is probably generally allowed in this country. 3 Am. & Eng. Encyl. of Law, 762.

**Section 18.**—[*Warehouseman has Reasonable Time to Determine Validity of Claims.*] If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the warehouseman should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

**Section 19.**—[*Adverse Title is no Defense, except as above Provided.*] Except as provided in the two preceding sections and in Sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee cannot set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc., 758.

**Section 20.**—[*Liability for Non-Existence or Misdescription of Goods.*] A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are

not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

This section imposes on the warehouseman a stricter rule than that generally in force in this country in that it makes a warehouseman liable for an innocent misdescription of the goods. See *Hale vs. Milwaukee Dock Co.*, 23 Wis. 276; but as the warehouseman can readily protect himself by inserting in the receipt only what he knows, namely, the marks on the goods or the statements of the depositor regarding them, it seems best to make the warehouseman responsible for what he asserts.

**Section 21.**—[*Liability for Care of Goods.*] A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

This states the common law. 3 Am. & Eng. Encyc., 750.

**Section 22.**—[*Goods must be Kept Separate.*] Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

As to most merchandise, of course, the warehouseman's duty is to keep the goods of each depositor separate. The following section provides for the exception to the rule.

**Section 23.**—[*Fungible Goods may be Commingled, if Warehouseman Authorized.*] If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

An exceptional rule prevails in this country by custom as to grain and similar merchandise. See definition of "fungible" in Section 58.

**Section 24.**—[*Liability of Warehouseman to Depositors of Commingled Goods.*] The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

This section and the two preceding sections state the general American law.

**Section 25.**—[*Attachment or Levy upon Goods for which a Negotiable Receipt has been Issued.*] If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding. For the mercantile theory proceeds upon the assumption that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason it is not admissible for the bailee to deliver the goods without taking up an outstanding negotiable receipt for them, and for the law to allow attachment or levy upon the goods, regardless of outstanding negotiable documents. For a similar reason the maker of negotiable notes is protected by garnishment; in most states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper.

Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. *Clews vs. Friedman*, 180 Mass. 556. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier cannot be garnished, 14 Am. & Eng. Encyc. of Law, 810. A transfer of the bill of lading prevails over a subsequent attachment. *Mather vs. Gordon*, 59 At. Rep. 424 (Conn.); *Robert C. White Co. vs. Chicago & C. R. Co.*, 87 Mo. App. 330; *Union Bank vs. Rowan*, 23 S. C. 339; and in *Peters vs. Elliott*, 78 Ill. 321, it was held that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this draft not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable receipt was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the receipt be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable receipt and the property covered thereby.

**Section 26.**—[*Creditors' Remedies to Reach Negotiable Receipts.*] A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

This section is to enable the court to give the fullest relief possible in making the negotiable receipt available to the creditor since the goods cannot otherwise be taken from the warehouseman's possession.

**Section 27.**—[*What Claims are Included in the Warehouseman's Lien.*] Subject to the provisions of Section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for

money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

This extends the common law, but has the precedent of other statutes, see Mohun, 37, 86, 124, 208, 215, 352, 546, 553, 706, 772, 801, 833.

**Section 28.**—[*Against what Property the Lien may be Enforced.*] Subject to the provisions of Section 30, a warehouseman's lien may be enforced—

(a.) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b.) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

**Section 29.**—[*How the Lien may be Lost.*] A warehouseman loses his lien upon goods—

(a.) By surrendering possession thereof, or

(b.) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

This section merely states the rule of the common law.

**Section 30.**—[*Negotiable Receipt must state Charges for which Lien is Claimed.*] If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall



be a lien for the charges enumerated so far as they are within the terms of Section 27, although the amount of the charges so enumerated is not stated in the receipt.

This section is obviously requisite for the credit of negotiable receipts. See note to Section 2.

**Section 31.**—[*Warehouseman need not Deliver until Lien is Satisfied.*] A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

This is the rule of the common law.

**Section 32.**—[*Warehouseman's Lien does not Preclude Other Remedies.*] Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

This section also only restates the common law.

**Section 33.**—[*Satisfaction of Lien by Sale.*] A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a.) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b.) A brief description of the goods against which the lien exists,

(c.) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be

paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d.) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the

goods to the person making such payment, if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

This section is copied with slight changes from the New York law, Mohun, 553.

**Section 34.**—[*Perishable and Hazardous Goods.*] If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

This section is copied with slight changes from Massachusetts Rev. Laws, c. 69, § 9.

**Section 35.**—[*Other Methods of Enforcing Liens.*] The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

It did not seem wise in view of the wide differences in procedure between some of the states to make the method of enforcing a lien provided by Section 33 exclusive.

**Section 36.**—[*Effect of Sale.*] After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

This section necessarily qualifies the right of a purchaser of a negotiable receipt. Such a purchaser may ordinarily assume that if the document was issued to the owner of goods and has been duly transferred to the purchaser, the latter will get a good title, but this assumption must be qualified by the chance referred to in this section. The age of the receipt will, however, ordinarily give warning. Moreover, the purchaser of the receipt will be entitled to the balance of the proceeds of the sale, after satisfying the warehouseman.

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### PART III.

#### NEGOTIATION AND TRANSFER OF RECEIPTS.

**Section 37.**—[*Negotiation of Negotiable Receipts by Delivery.*] A negotiable receipt may be negotiated by delivery—

(a.) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b.) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

(c.) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

It is not usual for warehouse receipts to be made to bearer, but as it seems clear that if a receipt were made in that form

it should be negotiable by delivery, it seemed wise to make provision for the case. The rule as to restrictive indorsement is also aimed rather to cover a possible contingency than a usual practice.

**Section 38.**—[*Negotiation of Negotiable Receipts by Indorsement.*] A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

This section applies the law of bills and notes, as it is in fact applied by mercantile custom to warehouse receipts.

**Section 39.**—[*Transfer of Receipts.*] A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

The three preceding sections follow the terminology of the Negotiable Instruments Law in distinguishing "negotiation" and "transfer." Section 39 applies not only to the transfer of non-negotiable receipts, but also to the transfer without a necessary indorsement of negotiable receipts.

**Section 40.**—[*Who may Negotiate a Receipt.*] A negotiable receipt may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

This section and the next are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes and there is authority for them in the statutes making warehouse receipts and bills of lading negotiable and in well recognized mercantile custom. It will be noticed that one who takes by trespass or a finder is not included within the description of those who may negotiate. To this extent the warehouse receipt is not made the equal of the bill of exchange in negotiability.

**Section 41.**—[*Rights of Person to Whom a Receipt has been Negotiated.*] A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a.) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

This section follows the mercantile theory of making the negotiable receipt represent not simply the title the person negotiating it had, but also whatever property the depositor had, that being what the receipt represented. Many states already have statutes making warehouse receipts negotiable. Mohun, 944; but these statutes have been so brief that they have been variously construed and have to some extent failed of their purpose. See *Shaw vs. Railroad Co.*, 101 U. S. 557; *Hurt's Case*, 99 Ala. 140; *Bank vs. Lee*, 99 Ala. 496.

**Section 42.**—[*Rights of Persons to Whom a Receipt Has Been Transferred.*] A person to whom a receipt has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable, such person also acquires the right to notify the warehouseman of the transfer to him of

such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

So far as a non-negotiable receipt is concerned this states the rights at common law of any purchaser of bailed goods. Therefore the purchaser gets nothing by the warehouse receipt except evidence. In the case of a negotiable receipt the purchaser has the further right given by the next section.

**Section 43.**—[*Transfer of Negotiable Receipt without Indorsement.*] Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes. Crawford, *Negot. Inst. Law*, § 79.

**Section 44.**—[*Warranties on Sale of Receipt.*] A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a.) That the receipt is genuine,
- (b.) That he has a legal right to negotiate or transfer it,
- (c.) That he has knowledge of no fact which would impair the validity or worth of the receipt, and .
- (d.) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular

purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

This section except (d) follows the Negotiable Instruments Law. Crawford, § 115. (d) it is believed states the existing law.

**Section 45.**—[*Indorser not a Guarantor.*] The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

Mercantile usage in regard to warehouse receipts differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law even where statutes have made warehouse receipts and bills of lading negotiable. *Shaw vs. Railroad Co.*, 101 U. S. 557; *Mida vs. Geissmann*, 17 Ill. App. 207.

**Section 46.**—[*No Warranty Implied from Accepting Payment of a Debt.*] A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are *Hoffman vs. Bank*, 12 Wall. 181; *Goetz vs. Bank*, 119 U. S. 551, and see *Daniel on Neg. Inst.*, §§ 174, 175.

In *Landa vs. Lattin*, 19 Tex. Civ. App. 246, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in *Finch vs. Gregg*,



126 N. C. 176, and *Searles vs. Smith Grain Co.*, 80 Miss. 688. A contrary decision was, however, rendered in *Tolerton-Stetson Co. vs. Anglo-California Bank*, 112 Ia. 706, and more recently *Landa vs. Lattin*, has been overruled in its own state, *Blaisdell Co. vs. Citizens Nat. Bank*, 96 Tex. 626, but has nevertheless been subsequently followed in Alabama. Though these decisions all relate to bills of lading, the same question may arise as to warehouse receipts and it seemed wise to provide for it.

**Section 47.**—[*When Negotiation not Impaired by Fraud, Mistake or Duress.*] The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

This section merely elaborates for the sake of clearness certain cases within the terms of Section 40.

**Section 48.**—[*Subsequent Negotiation.*] Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

This is copied from Section 25 (1) of the English Sale of Goods Act, where it applies to all sales of goods. It is of especial importance in the case of negotiable documents of title.

**Section 49.**—[*Negotiation Defeats Vendor's Lien.*]

Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage *in transitu* shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage *in transitu*. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

This perhaps goes beyond the existing law. *Mechem on Sales*, § 1507. See, however, *Newhall vs. Central Pac. R. R.*, 51 Cal. 345. The protection of dealings in negotiable receipts clearly requires that a vendor, who has, by giving up possession of goods or warehouse receipts, allowed negotiable receipts to be outstanding, should not be permitted to defeat one who buys such receipts.

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**PART IV.****CRIMINAL OFFENSES.****Section 50.**—[*Issue of Receipt for Goods not Received.*]

A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a receipt, knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

To insure the fundamental basis on which the value of negotiable receipts must rest it seemed necessary to punish criminally any misrepresentation or fraud in regard to the existence of the goods behind the receipt. Other obvious frauds are aimed at by the following five sections.

**Section 51.**—[*Issue of Receipt Containing False Statement.*] A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to section 50.

**Section 52.**—[*Issue of Duplicate Receipts not so Marked.*] A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in Section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 50.

**Section 53.** — [*Issue for Warehouseman's Goods of Receipts which do not State that Fact.*] Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

**Section 54.**—[*Delivery of Goods without Obtaining Negotiable Receipt.*] A warehouseman, or any officer, agent or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in Sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

**Section 55.**—[*Negotiation of Receipt for Mortgaged Goods.*] Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of a lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

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## PART V.

### INTERPRETATION.

**Section 56.**—[*When Rules of Common Law still Applicable.*] In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern.

A similar provision is commonly inserted when an attempt is made to reduce to statute form a topic of the law, as in the Negotiable Instruments Law or the Sale of Goods Act.

**Section 57.**—[*Interpretation Shall Give Effect to Purpose of Uniformity.*] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

This section introduces a new and necessary principle of construction. It would be unfortunate for courts of each state to follow the general rule of construing the law with reference to previously existing rules in that state—possibly rules peculiar to that state. The courts should in view of this section consider not primarily the law previously existing in one state, but in the states generally.

**Section 58.**—[*Definitions.*] (1.) In this act, unless the context or subject matter otherwise requires—

“Action” includes counter claim, set-off and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“ Warehouseman ” means a person lawfully engaged in the business of storing goods for profit.

(2.) A thing is done “ in good faith ” within the meaning of this act, when it is in fact done honestly, where it be done negligently or not.

The only one of these definitions requiring comment is that of value, which follows the Negotiable Instruments Law and applies the rule generally prevailing in regard to bills and notes to warehouse receipts.

**Section 59.**—[*Act Does not Apply to Existing Receipts.*] The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

**Section 60.**—[*Inconsistent Legislation Repealed.*] All acts or parts of acts inconsistent with this act are hereby repealed.

**Section 61.**—[*Time when the Act Takes Effect.*] This act shall take effect on the                      day of                      , one thousand nine hundred and

**Section 62.**—[*Name of Act.*] This act may be cited as the Warehouse Receipts Act.

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW OF  
BILLS OF LADING.

[To be further considered by Commissioners on Uniform State Laws.]

Be it enacted, etc., as follows :

PART I.

THE ISSUE OF BILLS OF LADING.

**Section 1.**—[*Persons Who May Issue Bills.*] Bills of lading may be issued by any common carrier.

**Section 2.**—[*Form of Bills. Essential Terms.*] A bill need not be in any particular form, but every bill must embody within its written or printed terms—

- (a.) The date of its issue,
- (b.) The name of the person from whom the goods have been received,
- (c.) The place where the goods have been received,
- (d.) The place to which the goods are to be transported,
- (e.) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,
- (f.) A description of the goods or of the packages containing them, and
- (g.) The signature of the carrier, which may be made by his authorized agent.

A carrier shall be liable to the holder of a negotiable bill for all damage caused by the omission therefrom of any of the provisions herein required.

**Section 3.**—[*Form of Bills. What Terms May Be Inserted.*] A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a.) Be contrary to public policy or to the provisions of this act,

(b.) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Much litigation has arisen over the point involved in 3 b. The provision as drawn is in accordance with the weight of authority (6 Cyc. of Law, 393) and is similar to the corresponding section of the Warehouse Receipts law.

**Section 4.**—[*Definition of Non-Negotiable Bill.*] A bill in which it is stated that the goods received will be delivered to the consignor, or to any other specified person is a non-negotiable bill.

**Section 5.**—[*Definition of Negotiable Bill.*] A bill in which it is stated that the goods received will be delivered—

- (a.) To the bearer,
- (b.) To the consignor or his order,
- (c.) To any other specified person or his order, or
- (d.) To the order of a specified person,

is a negotiable bill.

No provision shall be inserted in a negotiable bill that it is non-negotiable. Such provision, if inserted, shall be void.

**Section 6.**—[*Negotiable Bills Must not Be Issued in Sets.*] Negotiable bills shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

The issue of bills of lading in parts has been often condemned. It is a direct invitation to fraud in the case of negotiable bills, for one part is as much an original as another. Moreover, it is impossible to guard against the fraud, for it has been held that one who has contracted to buy goods and pay the price on transfer of the bill of lading must pay on having one of a set tendered him. He cannot demand all



(*Sanders vs. McLean*, 11 Q. B. D. 327), though by so doing alone can he be protected, for the carrier may deliver without liability to the first holder of a part who presents it. *Glynn vs. Dock Co.*, 7 App. Cas. 591.

**Section 7.**—[*Duplicate Bills Must Be so Marked.*] When more than one negotiable bill is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such bill, except the one first issued. A carrier shall be liable for all damage caused by his failure so to do to anyone who purchased the bill for value supposing it to be an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

The use of duplicate bills is common, and it is obvious that they should be so marked to avoid fraud or mistake. See *Midland Bank vs. Mo. Pac. Ry.*, 132 Mo. 492.

**Section 8.**—[*Failure to Mark "Not Negotiable."*] A non-negotiable bill shall have plainly placed upon its face by the carrier issuing it "non-negotiable" or "not negotiable." In case of the carrier's failure so to do, a holder of the bill, who purchased it for value supposing it to be negotiable, may, at his option, treat the same as imposing upon the carrier the same liabilities he would have incurred had it been negotiable.

This section shall not apply, however, to memoranda or written acknowledgments of an informal character.

A New York statute requires the carrier to require the surrender of all bills except those marked "not negotiable." See *Colgate vs. Penna. Co.*, 102 N. Y. 120.

**Section 9.**—[*Insertion of Name of Person to Be Notified.*] The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

This section is adopted with slight changes in wording from House Bill 15,846 of the 1st session of the 59th Congress. The practice is common for a shipper of goods to take a bill to his own order that he may obtain the discount of a draft

for the price, inserting also in the bill a request that the carrier notify the prospective buyer of the arrival of the goods so that the latter may promptly pay the price, get the bill of lading and remove the goods. Banks sometimes fear to discount a draft for the consignor when such a provision is inserted, questioning whether the prospective purchaser of the goods may not have a better right than one who buys the bill of lading either outright or as security. In fact a reasonable man, when such a bill is offered him, would naturally suppose that the person to be notified had at most a contract right to have the goods on payment of the price. As such a right would give no property right, legal or equitable, the purchaser of the bill of lading should take the goods free from liability. As it is important to remove any doubt, however, the section is drawn as above.

**Section 10.**—[*Obligation of Carrier to Issue Negotiable Bills.*] A carrier shall issue a bill for all goods received for transportation, and such bill shall, if so requested by the consignor, be a negotiable bill. The carrier shall not, directly or indirectly, make a greater charge for the transportation of goods for which a negotiable bill is issued, as a condition of issuing such bill, than the lowest rate for the transportation of like goods in like quantities when a negotiable bill is not requested or issued.

This section is substantially identical with Section 8 of House Bill 15,846.

**Section 11.**—[*Acceptance of Bill Indicates Assent to Its Terms.*] A consignor who receives a bill and makes no objection to its terms or conditions at the time he receives it shall not thereafter be allowed to deny that he assented to such terms and conditions, so far as they were not contrary to law or public policy.

This section deals with a question upon which there has been much litigation, and expresses the weight of authority, though there are many contrary decisions.

## PART II.

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR  
BILLS OF LADING.

**Section 12.**—[*Obligation of Carrier to Deliver.*] A carrier, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a bill for the goods or by the consignee of a bill for the goods, if such demand is accompanied with—

(a.) An offer to satisfy the carrier's lien upon the goods,

(b.) An offer to surrender the bill properly indorsed which was issued by the carrier for the goods, if the bill was negotiable, and

(c.) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the holder or owner so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal.

See the definition of "holder" in Section 53.

**Section 13.**—[*Justification of Carrier in Delivering.*] A carrier is justified in delivering the goods, subject to the provisions of the three following sections, to one who is either—

(a.) The person lawfully entitled to the possession of the goods, or his agent,

(b.) The consignee of a non-negotiable bill for the goods, or his agent,

(c.) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the consignee or by his mediate or immediate indorsee.

**Section 14.**—[*Carrier's Liability for Misdelivery.*] Where a carrier delivers the goods to one who is not in fact lawfully entitled to the possession of them, the carrier shall be liable

as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by the preceding section; and, even though he delivered the goods as therein authorized, he shall be so liable if prior to such delivery he had either—

(a.) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b.) Had actual knowledge that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

This is believed to represent the law both as to warehousemen (see Schouler [1905], §§ 44, 45; *Velsian vs. Lewis*, 15 Oreg. 530) and carriers (*Southern Express Co. vs. Dickson*, 94 U. S. 549; 6 Cyc. 468 *et seq.*).

**Section 15.**—[*Negotiable Bills Must Be Cancelled when Goods Delivered.*] Except as provided in Section 27, where a carrier delivers goods for which he had issued a negotiable bill, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, he shall be liable, to anyone who for value and in good faith purchases such bill, for failure to deliver the goods to him, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier.

It is an obvious requirement of the mercantile use of negotiable bills of lading that the goods shall remain in the hands of the carrier as long as the bill is outstanding, and statutes similar in effect to this section are in force in some states. See also, as to warehousemen, *Mohun*, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable bills, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt. See *Forbes vs. Boston & Lowell R. R.*, 133 Mass. 154; *Litchfield Bank vs. Elliott*, 83 Minn. 469.

**Section 16.**—[*Negotiable Bills Must Be Cancelled or Marked when Parts of Goods Delivered.*] Except as pro-

vided in Section 27, where a carrier delivers part of the goods for which he had issued a negotiable bill and fails either—

(a.) To take up and cancel such bill, or

(b.) To place plainly upon it a statement that a portion of the goods has been delivered, with a brief description either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession,

he shall be liable, to anyone who for value and in good faith purchases such bill, for failure to deliver all the goods specified in the bill, whether such purchaser acquired title to the bill before or after the delivery of any portion of the goods by the carrier.

This follows in regard to partial deliveries the rule of Section 15.

**Section 17.**—[*Altered Bills.*] Material and fraudulent alteration of a bill shall not excuse a carrier from liability to transport and deliver, according to the terms of the bill as originally issued, the goods for which it was issued, but shall excuse him from any further liability to the person who made the alteration and to any person who purchased the bill or the goods with notice of the alteration.

A holder of a materially altered negotiable bill who purchased it for value without notice of the alteration, shall acquire the same rights against the carrier which such holder would have acquired if the bill had not been altered at the time of the purchase.

Alteration of a document transferring title to property, or indicating ownership, cannot destroy the vested title to the property. Wald's Pollock (3d ed.), p. 845, and cases cited. Accordingly, even though a bill is altered, the goods in the carrier's possession belong to the same person they did before alteration, and though it would be possible to hold that the carrier's only relation to the goods became that of a bailee, bound only to turn over the goods on demand, but not bound to fulfill the contract of carriage, this seems an inconvenient result. No hardship is imposed upon the carrier if he is

required to fulfill his common law obligation to carry the goods to their destination—an obligation existing independent of the bill.

As to all other obligations, however—obligations resting solely on the contract in the bill, material and fraudulent alteration should excuse so far as parties to the fraud are concerned. The rule of the Negotiable Instruments Law making material alteration a discharge in any event seems too severe a rule for anything but bills of exchange and promissory notes. Bills of lading have never been drawn with quite the same formality and precision.

**Section 18.**—*Lost or Destroyed Bills.*] Where a negotiable bill has been lost or destroyed, the person claiming to be the owner thereof may present a petition in the county wherein the goods were shipped, or wherein they were by the terms of the bill to be delivered, to a court having equity powers. Such petition shall be verified by the oath or affirmation of the petitioner, and shall set forth all the material facts as fully and accurately as possible, including the date of the issue of the bill, a description of the goods, a statement of the value thereof, the name of the person to whom the bill was given, the manner in which the petitioner obtained title to such bill, the date at which he acquired title and whether such title was absolute or in trust or otherwise qualified, the date and circumstances of the loss or destruction, and a statement that the petitioner is unable by reason thereof to return such bill, and praying for an order that the carrier issue to the petitioner another bill for the goods, or that such carrier, or the carrier by whom the goods were to be delivered at their destination, deliver to the petitioner the goods for which the bill was issued without the surrender of the bill. Whereupon the court shall cause a citation to issue directed to the carrier and to such other person or persons, if any, as may seem to the court to have an interest in the matter, requiring them to appear on a day certain fixed by the court and show cause why the prayer of the petitioner should not be granted. On the return of such citation, the court may in its discretion, after due con-

sideration and hearing of the parties and their evidence, grant the prayer of the petition, on condition, however, that the petitioner shall first pay the carrier's costs and counsel fee, and shall satisfy the carrier's lien upon the goods, and shall also give to the carrier a bond with sufficient sureties in double the value of the goods conditioned to save the carrier harmless from all loss or liability, costs or expenses which he may incur by reason of the original bill remaining outstanding and uncanceled.

The delivery of the goods or the issue of a new bill, which need not be marked duplicate, under an order of the court as provided in this section, shall not relieve the carrier from liability to one who has purchased the original negotiable bill for value without notice of the petition or of the delivery of the goods or of the issue of a new bill.

The impropriety of having outstanding two negotiable bills makes it essential that even in case such a bill is lost or destroyed a new bill should not be issued without proper precautions being taken. It may at first sight seem to business men wrong that the holder of the bill and the carrier should not be able to make such agreement as they can for a new bill or delivery of the goods, but they are not the only interested parties. Some other person may be then or in the future a holder of the lost bill, and in order to guard his rights some one other than the parties directly interested must oversee the matter. The case differs from that of a lost bill of exchange or note in that such an instrument is merely the promise of its signers. A bill of lading is not only a promise, but it is a representation that goods are in the hands of the carrier. It is because of this representation that a carrier cannot be allowed to issue as many bills of lading as it wishes, whereas the maker of a bill of exchange or note may do so.

**Section 19.**—[*Effect of Duplicate Bills.*] A bill upon the face of which the word "duplicate" is plainly placed shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued and uncanceled at the date of the issue of the duplicate, but no other liability.

Duplicate bills of lading seem to have been somewhat confused by some courts, and perhaps by some business men, with bills of lading issued in sets, in which each part is an original. Banks appear sometimes to lend money on duplicate receipts, and in *First Bank of Batavia vs. Ege*, 109 N. Y. 120, at least the court seemed to treat the duplicate as if it were as good as the original. In *Shaw vs. United States*, 101 U. S. 557, the duplicate was treated as of no more value than a copy. See also *Midland Bank vs. Mo. Pac. Ry. Co.*, 132 Mo. 492.

It is obvious that two separate bills representing the goods cannot be permitted. The duplicate, therefore, must not represent the goods. It should, however, be conclusive upon the carrier that there is outstanding an original of the same tenor.

**Section 20.**—[*Carrier Cannot Set Up Title in Himself.*]

No title or right to the possession of the goods, on the part of the carrier, unless such title or right is derived directly or indirectly from a transfer made by the shipper or consignee after the shipment or from the carrier's lien, shall excuse the carrier from liability for refusing to deliver the goods according to the terms of the bill.

This states the common law as to bailees generally. 3 Am. & Eng. Encyc. of Law, 759.

**Section 21.**—[*Interpleader of Adverse Claimants.*]

If more than one person claims the title or possession of the goods, the carrier may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. In order to avail himself of this remedy the carrier must make no claim on his own behalf other than for the satisfaction of his lien.

The case of *Crawshay vs. Thornton*, 2 Myl. & C. 1, unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy, and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

**Section 22.**—[*Carrier Has Reasonable Time to Determine Validity of Claims.*]

If some one other than the consignee



or person claiming under him has a claim to the title or possession of the goods, and the carrier has knowledge of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person claiming under him or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the carrier should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

**Section 23.**—[*Adverse Title Is no Defense, Except as above Provided.*] Except as provided in the two preceding sections and in Section 13, no right or title of a third person shall be a defense to an action brought by the consignee or person claiming under him against the carrier for failure to deliver the goods on demand.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee cannot set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc. of Law, 758.

**Section 24.**—[*Liability for Misdescription.*] A carrier shall be liable to the holder of a bill for the non-existence of the goods or the failure of the goods to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the consignor.

This section imposes on the carrier a stricter rule than that generally in force in this country in that it makes a carrier

liable for an innocent misdescription of the goods. See *Hale vs. Milwaukee Dock Co.*, 23 Wis. 276; but as the carrier can readily protect himself by inserting in the bill only what he knows, namely, the marks on the goods or the statements of the shipper regarding them, it seems best to make the carrier responsible for what he asserts.

**Section 25.**—[*Attachment or Levy upon Goods for which a Negotiable Bill Has Been Issued.*]—If goods are delivered to a carrier by the owner or by a person having power to transfer the title in them to a purchaser for value in good faith, and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier.

**Section 26.**—[*Creditor's Remedies to Reach Negotiable Bills.*] A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction in attaching such bill, or in satisfying the claim by means thereof, as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by Section 25, the creditor is given by this section such rights as are included under the head of bills of equitable attachment or in aid of execution.

**Section 27.**—[*Negotiable Bill Must State Charges for which Lien Is Claimed.*] If a negotiable bill is issued for goods, the carrier shall have no lien on such goods, except for charges on those goods for freight, storage and expenses necessary for the preservation of the goods subsequent to the date of the bill, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

**Section 28.**—[*Effect of Sale.*] After goods have been lawfully sold to satisfy a carrier's lien, he shall not thereafter

be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.

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### PART III.

#### NEGOTIATION AND TRANSFER OF BILLS.

**Section 29.**—[*Negotiation of Negotiable Bills by Delivery.*]

A negotiable bill may be negotiated by delivery.—

(a.) Where, by the terms of the bill, the carrier undertakes to deliver the goods to the bearer, or

(b.) Where, by the terms of the bill, the carrier undertakes to deliver the goods to a specified person or order, or to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank or to bearer.

**Section 30.**—[*Negotiation of Negotiable Bills by Indorsement.*] A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are, by the tenor of the bill, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

**Section 31.**—[*Transfer of Bills.*] A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the receipt or to the goods represented thereby.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

**Section 32.**—[*Who May Negotiate a Bill.*] A negotiable bill may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the bill has been entrusted by the owner, if, by the terms of the bill, the carrier undertakes to deliver the goods to the order

of the person to whom the possession or custody of the bill has been entrusted, or if at the time of such entrusting the bill is in such form that it may be negotiated by delivery.

**Section 33.**—[*Rights of Person to Whom a Bill Has Been Negotiated.*] A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a.) Such title to the goods as the person negotiating the bill to him had or had power to convey to a purchaser in good faith for value, and also such title to the goods as the consignee had or had power to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

**Section 34.**—[*Rights of Person to Whom a Bill Has Been Transferred.*] A person to whom a bill has been transferred but not negotiated acquires thereby—

(a.) As against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

(b.) The right to notify the carrier of the transfer to him of such receipt, and thereby to acquire the direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill.

Prior to the notification of the carrier by the transferor or transferee, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser of a subsequent sale of the goods by the transferor.

**Section 35.**—[*Transfer of Negotiable Bill without Endorsement.*] Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears.

**Section 36.**—[*Warranties on Sale of Bill.*] A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants—

- (a.) That the bill is genuine,
- (b.) That he has a legal right to transfer it,
- (c.) That he has knowledge of no fact which would impair the validity or value of the bill, and
- (d.) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

The clause in the first paragraph beginning “including” was inserted to avoid any possible misapprehension as to the scope of Section 38.

**Section 37.**—[*Indorser not a Guarantor.*] The indorsement of a bill shall not make the indorser liable for any failure on the part of the maker or previous indorsers of the bill to fulfil their respective obligations.

**Section 38.**—[*No Warranty Implied from Accepting Payment of a Debt.*] A mortgagee or pledgee of a bill who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are *Hoffman vs. Bank*, 12 Wall. 181; *Goetz vs. Bank*, 119 U. S. 551, and see *Daniel on Neg. Inst.*, §§ 174, 175.

In *Landa vs. Lattin*, 19 Tex. Civ. App. 246, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for

security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in *Finch vs. Gregg*, 126 N. C. 176, and *Searles vs. Smith Grain Co.*, 80 Miss. 688. A contrary decision was, however, rendered in *Tolerton-Stetson Co. vs. Anglo-California Bank*, 112 Ia. 706, and more recently *Landa vs. Lattin* has been overruled in its own state. *Blaidsell Co. vs. Citizens' Nat. Bank*, 96 Tex. 626.

**Section 39.**—[*When Negotiation not Impaired by Fraud, Mistake or Duress.*] The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was induced by fraud, mistake or duress to entrust the possession or custody of the bill to such person, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

**Section 40.**—[*Subsequent Negotiation.*] Where a person having sold, mortgaged or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

**Section 41.**—[*Form of the Bill as Indicating Rights of Buyer and Seller.*] Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of title or right to the possession of goods as follows :

(a.) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the title to the goods to the buyer.

(b.) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c.) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d.) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for valuable consideration, the bill or goods from the buyer, shall obtain the title in the goods, although the draft has not been honored, provided that such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

**Section 42.**—[*Negotiation Defeats Vendor's Lien.*] Where a negotiable bill has been negotiated to a person as buyer or owner of the goods, and that person negotiates the bill to a person who purchases it in good faith and for value, then, if such last mentioned negotiation was by way of sale, any vendor's lien or right of stoppage *in transitu* which might have

been exercised prior thereto shall be defeated, and if such last mentioned negotiation was by way of pledge or other disposition for value, any vendor's lien or right of stoppage *in transitu* which might have been exercised prior thereto, shall be exercised only subject to the rights of the person to whom the last mentioned negotiation was made.

**Section 43.**—[*Stoppage in Transitu.*] When notice of stoppage *in transitu* is given by an unpaid seller to a carrier in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller, and shall not thereafter be liable to the buyer for so doing. The expenses of such redelivery must be borne by the seller. If, however, a negotiable bill representing the goods has been issued by the carrier, he may demand the surrender of such bill, or, at the seller's option, a bond with sufficient sureties indemnifying the carrier or other bailee from liability to any holder of such bill, before redelivering the goods.

The carrier shall be liable to any holder of such negotiable bill who purchased it in good faith for value, whether such purchase was before or after the redelivery of the goods to the seller.

The part of the act dealing with the negotiation as a whole follows closely the Sales and Warehouse Receipts Acts.

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## PART IV.

### CRIMINAL OFFENSES.

**Section 44.**—[*Issue of Bill for Goods not Received.*] A carrier, or any officer, agent or servant of a carrier, who issues or aids in issuing a bill knowing that the goods for which such bill is issued have not been actually received by such carrier, or are not under his actual control at the time of issuing such bill, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment not exceed-



ing one year, or by a fine not exceeding one thousand dollars, or by both.

**Section 45.**—[*Issue of Bill Containing False Statement.*]

A carrier, or any officer, agent or servant of a carrier, who fraudulently issues or aids in fraudulently issuing a bill for goods knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**Section 46.**—[*Issue of Duplicate Bills not so Marked.*]

A carrier, or any officer, agent or servant of a carrier, who issues or aids in issuing a duplicate or additional negotiable bill for goods knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case provided for in Section 18, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**Section 47.**—[*Delivery of Goods without Obtaining Negotiable Bill.*]

A carrier, or any officer, agent or servant of a carrier, who delivers goods out of the possession of such carrier, knowing that a negotiable bill the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession thereof, at or before the time of such delivery, shall, except in the cases provided for in Sections 18 and 28, be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**Section 48.**—[*Negotiation of Bill for Mortgaged Goods.*]

Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of

title or the existence of the lien or mortgage, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

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## PART V.

### INTERPRETATION.

**Section 49.**—[*Variation of Implied Obligations.*] Where any right, duty or liability would arise by implication of law under a bailment to a carrier, it may, unless the contrary is expressly provided, be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract.

**Section 50.**—[*Rights May Be Enforced by Action.*] Where any right, duty or liability is declared by this act, it may, unless otherwise provided in this act, be enforced by action.

**Section 51.**—[*When Rules of Common Law Still Applicable.*] In any case not provided for in this act, the rules of the common law, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall be applied.

**Section 52.**—[*Interpretation Shall Give Effect to Purpose of Uniformity.*] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Section 53.**—[*Definitions.*] (1.) In this act, unless the context or subject matter otherwise requires—

“Action” includes counter claim, set-off, and suit in equity.

“Bill” means bill of lading, and includes all documents in which a common carrier acknowledges the receipt of goods for carriage, and promises, expressly or impliedly, to deliver such

goods to a person at a place to which such goods are to be carried.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Delivery" means voluntary transfer of possession from one person to another.

"Goods" means chattels or merchandise in course of transportation, or which has been or is about to be transported.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

(2.) A thing is done "in good faith," within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

**Section 54.**—[*Act Does Not Apply to Existing Bills.*] The provisions of this act do not apply to bills made and delivered prior to the passage thereof.

**Section 55.**—[*Inconsistent Legislation Repealed.*] All acts or parts of acts inconsistent with this act are hereby repealed.

**Section 56.**—[*Time when the Act takes Effect.*] This act shall take effect on the            day of            , one thousand nine hundred and

**Section 57.**—[*Name of Act.*] This act may be cited as the Bills of Lading Act.

DRAFT OF AN ACT TO MAKE UNIFORM  
THE LAW OF PARTNERSHIP.

*(To be further considered by Commissioners on Uniform State Laws.)*

Be it enacted, etc., as follows :

PART I.

NATURE OF PARTNERSHIP.

**Section 1.**—[*Partnership Defined.*] (1.) A partnership is a legal person formed by the association of two or more individuals for the purpose of carrying on business with a view to profit.

(2.) But a joint stock association, whether incorporated or not incorporated, whose members are fluctuating by reason of the transferability of their shares, and whose business is also managed by a board of directors, committee or individual officer, is not a partnership within the provisions of this act.

**Section 2.**—[*Rules Determining Existence of Partnership.*] In determining whether a partnership does or does not exist, regard shall be had to the following rules:

(1.) Joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2.) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3.) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment

contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(a.) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such :

(b.) A contract for the remuneration of a servant or agent or landlord of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent or landlord a partner in the business or liable as such :

(c.) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such :

(d.) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such.

**Section 3.**—[*Seller of Good-Will a Postponed Creditor.*]

In the event of any buyer of a good-will in consideration of a share of the profits of the business being adjudged a bankrupt, entering into an agreement to pay his creditors less than one hundred cents on the dollar, or dying in insolvent circumstances, the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the buyer have been satisfied.

**Section 4.**—[*Lender a Special Partner.*] The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, makes the lender not a general partner, but a special partner only. Provided that the lender

has complied with all the formalities prescribed by the sections of this act relating to the formation of limited or special partnerships. But if such lender fails to comply with these formalities, he shall be liable to the creditors of the partnership as if he were a general partner.

**Section 5.**—[*Firm an Entity Distinct from the Partners.*]

(1.) Persons who have entered into partnership with one another are for the purposes of this act called collectively a firm, and the name under which their business is carried on is called the firm name.

(2.) The legal title to partnership property is vested in the firm, if property acquired under similar circumstances by a natural person would vest in such person. In all other cases the partnership property belongs to the firm as a *cestui que trust* or equitable owner.

(3.) Upon obligations in favor of the firm against a stranger or against one or more of the partners, the firm as such is the obligee; and upon obligations in favor of a stranger or of one or more of the partners against the firm, the firm as such is the obligor.

(4.) Actions upon claims in favor of or against a firm must be brought in the firm name.

**Section 6.**—[*Registration of Partnerships.*] (1.) Every partnership transacting business in this state must file, in the office of the county clerk of the county in which its principal office or place of business is situated, a certificate to be indexed by said clerk stating the firm name of the partnership, the general nature of its business, and the full name and residence of each member of the partnership.

(2.) The certificate prescribed in the foregoing paragraph must be signed by the partners and acknowledged by some officer authorized to take acknowledgments of conveyances of real estate.

(3.) Upon every change of members of a partnership transacting business in this state, a new certificate, duly signed and acknowledged by all the partners in the new firm must be filed

with the clerk of the county in which its principal office or place of business is situated.

(4.) Every county clerk shall keep a register of the names of firms and persons mentioned in the certificates filed in his office pursuant to this act, entering in alphabetical order the name of every such partnership and of each partner interested therein.

(5.) After the passage of this act, no partnerships doing business contrary to the provisions of this act shall begin or maintain an action upon or on account of any contracts made on transactions had with such partnership until the certificate prescribed by this section has been filed.

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## PART II.

### RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM AS SUCH.

**Section 7.**—[*Partner Agent of the Firm as to Partnership Business.*] Every partner is an agent of the firm for the purpose of the business of the partnership; and the acts of every partner who does any act, including the execution in the firm name of deeds of obligation or conveyance, for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

**Section 8.**—[*Firm not Bound by Acts of Partner without the Scope of Firm Business.*] Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner.

**Section 9.**—[*Secret Restrictions upon Power of Partner Ineffectual against Strangers.*] If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

**Section 10.**—[*Firm Bound by Acts of Partner Committed within Scope of Partnership Business.*] Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

**Section 11.**—[*Liability of Firm for Partner's Breach of Trust.*] In the following cases; namely—

(a.) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(b.) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm; the firm is liable to make good the loss.

**Section 12.**—[*Each Partner Answerable for Firm Liabilities.*] An execution issued upon a judgment against a firm shall operate only upon the partnership property. But the plaintiff in any such judgment may file a bill in equity against any one or more of the partners, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and upon proof of these allegations shall be entitled to a decree for the amount of the partnership liability under the judgment against it, and to execution thereon against the partner or partners made defendants to the bill.

**Section 13.**—[*One May be Liable as a Partner by Estoppel.*] (1.) Every one who by words spoken or written



or by conduct represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where, after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

**Section 14.**—[*Firm Bound by Admission of Partner.*]

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, or winding up, is evidence against the firm.

**Section 15.**—[*Notice to Partner is Notice to Firm.*]

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

**Section 16.**—[*Liabilities of Incoming and Out-Going Partners.*] (1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he becomes a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. .

**Section 17.**—[*Revocation of Guaranty by Change in Firm.*] A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

**Section 18.**—[*Partner Exonerated from Future Liability by Renouncing Future Profits.*] (1.) A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person and to his co-partners that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

(2.) After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his co-partners may proceed to dissolve the partnership.

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### PART III.

#### RELATION OF PARTNERS TO THE FIRM.

**Section 19.**—[*Relations Varied by General Consent.*] The mutual rites and duties of the firm and the partners, whether ascertained by agreement or defined by this act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

**Section 20.**—[*Partnership Property to be Used for Firm Purposes.*] All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this act partnership property, and must be held

and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

**Section 21.**—[*Property Bought with Firm Money is Partnership Property.*] Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

**Section 22.**—[*Nature of Partner's Interest.*] A partner has no beneficial interest, legal or equitable, in any specific property whether real or personal belonging to the partnership, but only a right to receive in cash his proportion of the surplus of the firm assets remaining after all the claims of firm creditors have been satisfied.

**Section 23.**—[*Partner's Interest Subject to Changing Order.*] (1.) After the commencement of this act an attachment or execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The Court may, on the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favor of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The firm through the other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

**Section 24.**—[*Rules Determining Rights and Duties of Firms and Partners.*] The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules—

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally toward the losses whether of capital or otherwise sustained by the firm.

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(a.) In the ordinary and proper conduct of the business of the firm; or

(b.) In or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the legal rate per annum from the date of the payment or advance.

(4.) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership business.

(7.) No person may be introduced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9.) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

**Section 25.**—[*No Expulsion of a Partner.*] No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

**Section 26.**—[*Determination of Partnership at Will.*]

(1.) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership

at any time on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by a deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

**Section 27.**—[*Continuance of Partnership Beyond Fixed Term.*] (1.) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

**Section 28.**—[*Duty of Partner to Render Accounts.*] Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

**Section 29.**—[*Partner Accountable as a Fiduciary.*] (1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership or from any use by him of the partnership property name or business connection.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

**Section 30.**—[*Partner to Account for His Profits of a Rival Business.*] If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

**Section 31.**—[*Rights of Assignee of a Partner's Share.*] (1.) An assignment by any partner of his share in the part-

nership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

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#### PART IV.

##### DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

**Section. 32.**—[*Dissolution by Lapse of Time or Notice.*] Subject to any agreement between the partners, a partnership is dissolved—

(a.) If entered into for a fixed term, by the expiration of that term :

(b.) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking :

(c.) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

**Section 33.**—[*Dissolution by Death, Bankruptcy or Charge.*] (1.) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2.) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this act for his separate debt.

**Section 34.**—[*Dissolution by Illegality of the Partnership.*] A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

**Section 35.**—[*Dissolution by Decree of the Court.*] On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

(a.) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner.

(b.) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract.

(c.) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated prejudicially to affect the carrying on of the business.

(d.) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that is not reasonably practicable for the other partner or partners to carry on the business in partnership with him.

(e.) When the business of the partnership can only be carried on at a loss.

(f.) Whenever in any case circumstances have arisen, which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

**Section 36.**—[*Notice or Knowledge of Dissolution Essential as to Third Persons.*] (1.) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2.) Persons who have had business relations with a firm by which a credit is raised upon the faith of the partnership must have actual knowledge or special notice equivalent to knowledge of the termination of the partnership.

(3.) An advertisement in a newspaper of the place (or of each place, if more than one) in which at the time of dissolution the partnership business was carried on shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(4.) If the fact of dissolution is notorious in the community in which a person, who had not dealings with the firm before the dissolution, is engaged in business, he cannot charge a retired partner, although the dissolution was not advertised in a newspaper and although he was in fact ignorant of the dissolution.

(5.) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

**Section 37.**—[*Right of Partners to Notify Dissolution.*] On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

**Section 38.**—[*Continuing Authority of Partners for Purpose of Winding up.*] After the dissolution of a partner-



ship the authority of each partner to bind the firm, and the other rights and obligations of the partners continue, notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

**Section 39.**—[*Rights of Partners as to Application of Partnership Property.*] On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

**Section 40.**—[*Apportionment of Premium where Partnership Prematurely Dissolved.*] Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

(a.) The dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or

(b.) The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

**Section 41.**—[*Rights where Partnership Dissolved for Fraud or Misrepresentation.*] Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a.) To a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(b.) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(c.) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

**Section 42.**—[*Right of Outgoing Partner to Share Profits after Dissolution.*] (1.) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the legal rate per annum on the amount of his share of the partnership assets.

(2.) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all

material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

**Section 43.** [*Retiring or Deceased Partner's Share to Be a Debt.*] Subject to any agreement between the partners, the amount due from the continuing firm to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

**Section 44.**—[*Rule for Distribution of Assets or Final Settlement of Accounts.*] In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed :

(a.) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits :

(b.) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order :

(1.) In paying the debts and liabilities of the firm to persons who are not partners therein :

(2.) In paying to each partner ratably what is due from the firm to him for advances as distinguished from capital :

(3.) In paying to each partner ratably what is due from the firm to him in respect of capital :

(4.) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

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## PART V.

### LIMITED PARTNERSHIP.

**Section 45.**—A limited partnership may be formed by two or more persons for the transaction of any lawful business except the business of insurance.

**Section 46.**—Such partnership shall consist of one or more general partners who shall be jointly and severally liable for all the debts of the partnership, and of one or more special partners who shall contribute to the common stock in actual cash payment a specified amount of capital and shall not be personally liable for the debts of the partnership except as hereinafter provided.

**Section 47.**—The business of such partnership shall be conducted under a firm name in which the names of the general partners only shall be inserted, without the addition of the word “company” or of any other general term; or, with the consent of the members of a former firm or their legal representatives to whose business such partnership lawfully succeeds, it may be conducted under the name of such former firm. The names of not more than three general partners shall be required to be inserted in such firm name. A special partner who consents or is privy to the use of his name in the firm name shall be liable as a general partner; but if his surname is the same as that of a general partner whose surname is used in the firm name, or if it appears in the name of a former firm adopted as aforesaid by such partnership, he shall not be so liable.

**Section 48.**—The members of such partnership shall make and severally sign a certificate, which shall contain the firm name under which the business of the partnership is to be conducted, the names and residences of all the partners, distinguishing who are general and who special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, the time when the partnership is to begin and the time when it is to terminate. If a false statement is made in such certificate, all the partners shall be liable as general partners.

**Section 49.**—Such certificate shall be acknowledged by all the partners before a justice of the peace or, if a partner resides out of the state, before a United States consul, notary public or other magistrate authorized to take acknowledg-

ments of deeds of land in this state, and shall be filed in the office of the secretary of the state and recorded in said office in a book to be kept for that purpose, which shall be open to public inspection. The fee for filing such certificate shall be one dollar.

**Section 50.**—A copy of such certificate shall, immediately after such filing, be published once in each of six successive weeks in a newspaper published in the place (or in each place if more than one) where the partnership business is to be carried on. Within sixty days after the filing of said certificate, an affidavit of one of said partners stating the newspaper in which and the dates upon which the copy of said certificate was published shall be filed in the office of the secretary of the state and recorded as provided in the preceding section.

**Section 51.**—Upon the renewal or extension of a limited partnership beyond the time originally limited for its termination, the capital contributed by the special partners shall equal or exceed the aggregate capital originally contributed by them, and a certificate of such renewal or extension stating the amount of capital contributed by each of the special partners at such renewal or extension and that the whole amount thereof equals or exceeds the amount originally contributed by them, shall be made, acknowledged, filed, recorded and published and an affidavit of publication filed and recorded in like manner as is herein provided for the certificate of its original formation.

**Section 52.**—During the continuance of such partnership no part of its capital shall be withdrawn, nor shall any division of interest or profits be so made as to reduce such capital below the amount stated in said certificates; but a special partner may withdraw from the profits the interest on the capital contributed by him at any rate agreed on not exceeding six per cent. per annum, if such withdrawal does not impair the capital. If at any time during the continuance or at the termination of the partnership its assets are not sufficient to

pay its debts, the special partners shall severally be held liable for all money by them in any way withdrawn or received, except as above provided, with interest thereon from the time when it was so withdrawn or received.

**Section 53.**—All suits relating to the business of such partnerships shall be prosecuted by and against the firm. The equitable proceeding by a judgment creditor of the firm described in Section 12 of this act shall be used against the general partners only, except when the special partners are held liable as general partners and except when special partners are held severally liable on account of money by them withdrawn from the common stock as provided in the preceding section, in which case all partners so liable shall be subject to this equitable proceeding.

**Section 54.**—No such partnership shall be dissolved, except by operation of law, before the time specified in the certificate of its formation or renewal of extension, unless a notice of such dissolution is filed and recorded in the office of the secretary of the state, and is published and an affidavit of publication is made as provided in Section 50.

**Section 55.**—Except as provided in this act the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

*Supplemental.*

**Section 56.**—[*Definitions of "Court" and "Business."*]  
In this act, unless the contrary intention appears,—

The expression "court" includes every court and judge having jurisdiction in the case:

The expression "business" includes every trade, occupation or profession.

**Section 57.**—[*Saving for Rules of Equity and Common Law.*] The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this act.

**Section 58.**—[*Inconsistent Legislation Repealed.*] All acts or parts of acts inconsistent with this act are hereby repealed.

**Section 59.**—[*Time when Act Takes Effect.*] This act shall come into operation on the       day of       one thousand nine hundred and       .

**Section 60.**—[*Name of Act.*] This act may be cited as the Partnership Act, 190—.





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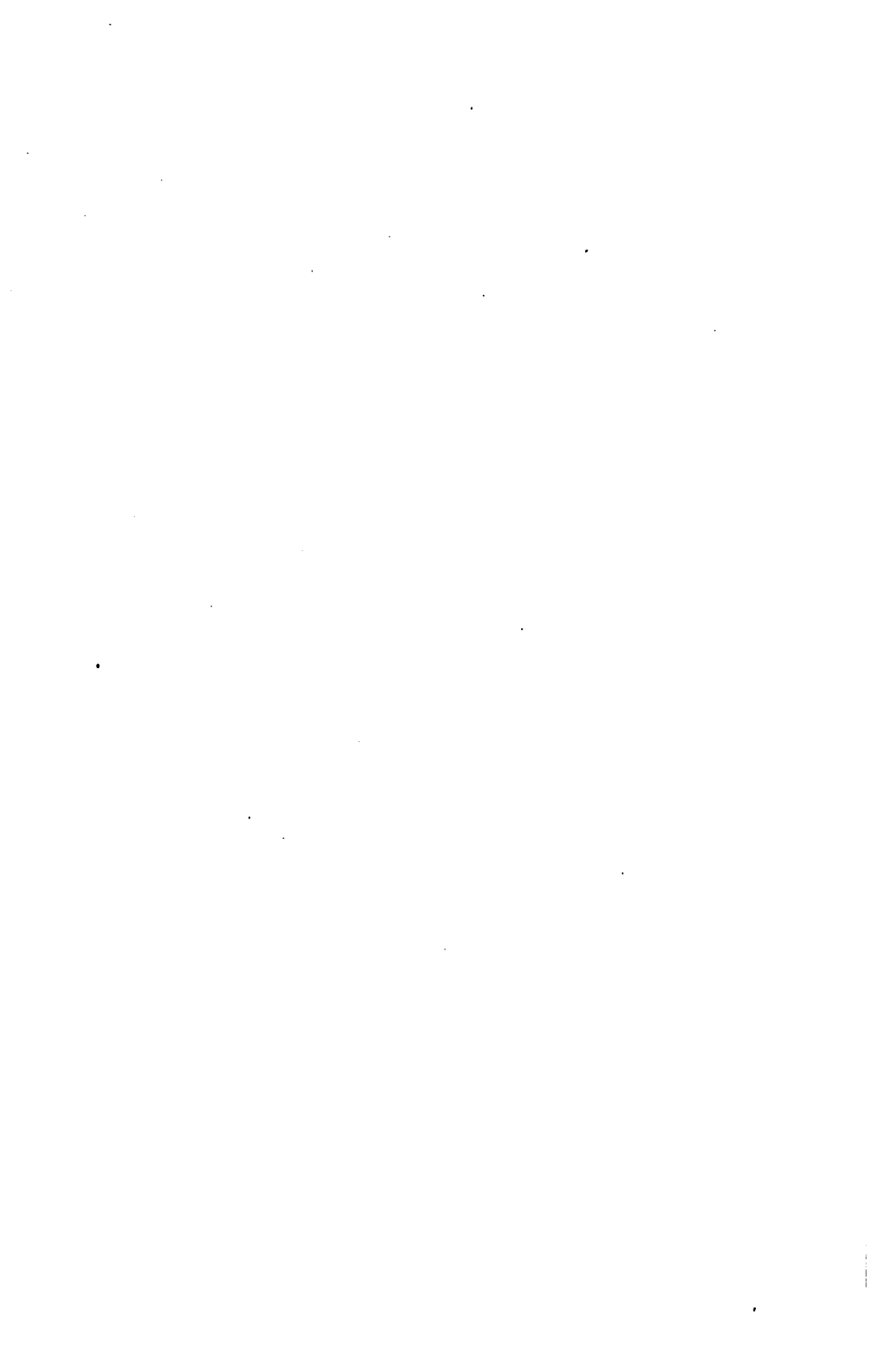
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